

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2010-404-007064

BETWEEN JOSEPH GREGORY HALLETT
 Appellant

AND PETER ALDERIDGE WILLIAMS
 Respondent

Hearing: 11 February 2011
 Further submissions filed 14 February 2011

Appearances: Appellant in person
 Respondent in person with H Phillips

Judgment: 14 February 2011

JUDGMENT OF ASHER J

*This judgment was delivered by me on Monday, 14 February 2011 at 4.30pm
pursuant to r 11.5 of the High Court Rules.*

Registrar/Deputy Registrar

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Introduction

[1] Gregory Hallett has appealed the judgment of Judge L I Hinton of 18 October 2010, whereby judgment was entered in favour of the respondent Peter Williams QC against him.¹ Mr Hallett seeks a stay of execution pending the hearing and determination of that appeal.

[2] Mr Williams had sued Mr Hallett for defamation. There is no need to go into the details of the claim. In the judgment Mr Williams was awarded \$125,000 in compensatory damages and \$15,000 for punitive damages. A number of orders by way of injunction were made against Mr Hallett restraining him from publishing and otherwise disseminating defamatory material directed against Mr Williams.

[3] The proceeding had originally been set down for a defended hearing on 3 May 2010. On that date Mr Hallett was overseas. His counsel, Mr M Meyrick, appeared and despite strong opposition from Mr Williams obtained an adjournment. In giving the adjournment the Judge directed that a fixture be made for the hearing of the matter at the earliest opportunity. A fixture was allocated for 23 June 2010. Mr Meyrick again appeared and again sought an adjournment. The adjournment application was declined and the hearing proceeded by way of formal proof. Judgment was reserved and ultimately delivered on 18 October 2010.

[4] A document which in the application is stated to be a notice of intention to appeal and on the backing sheet is called a “notice of application for leave to appeal” was filed on 26 October 2010. An application for stay of execution was filed on 9 December 2010. Mr Williams has issued proceedings to bankrupt Mr Hallett based on the judgment, and they are to be heard on Tuesday, 15 February 2011. This appeal is set down for hearing on 30 March 2011.

¹ *Williams v Hallett* DC Auckland CIV-2008-004-2897, 18 October 2010.

The application

[5] The application refers to rr 10.9, 15.1(3) and 17.29 of the High Court Rules. However, it is clear that the correct rule to apply in the circumstances is r 20.10 of the High Court Rules. This is the stay of proceedings rule specifically directed to appeals. It provides that an appeal does not operate as a stay of the proceedings appealed against or any enforcement of any judgment or order appealed against. Under r 20.10(2)(b) the Court may in its discretion stay enforcement of any judgment or order appealed against.

[6] The principles relating to such applications are now clearly understood. Hammond J's summary in *Dymoocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd*² approved by the Court of Appeal in *New Zealand Insulators Ltd v ABB Ltd*³ sets out a non-exhaustive list of considerations the Court should take into account when deciding whether to grant a stay:

- (1) If no stay is granted will the applicants' right of appeal be rendered nugatory?
- (2) The bona fides of the applicants as to the prosecution of the appeal.
- (3) Will the successful party be injuriously affected by the stay?
- (4) The effect on third parties.
- (5) The novelty and importance of the question involved.
- (6) The public interest in the proceedings.
- (7) The overall balance of convenience.

[7] The apparent strength of the appeal can also be a relevant factor.⁴ So can the likely length of time of the stay as part of the overall balance of convenience.

² *Dymoocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* (1999) 13 PRNZ 48 (HC) at [9].

³ *New Zealand Insulators Ltd v ABB Ltd* (2006) 18 PRNZ 459 (CA) at [11].

⁴ *Keung v GBR Investment Ltd* [2010] NZCA 396 at [11].

The grounds put forward by Mr Hallett

[8] The primary thrust of Mr Hallett's submissions was an endeavour to persuade me that his allegations against Mr Williams were true. Much of Mr Hallett's submissions consisted of sweeping statements about the character of Mr Williams. Despite my direction that he only address points relevant to the stay application, he persisted in making wildly general comments and assertions that were entirely unhelpful. I directed that there should be no publication of these remarks. Mr Hallett did not seek to analyse the reasoning of the District Court judgment, save to criticise a number of specific references in the judgment.

[9] I read a number of affidavits filed by Mr Hallett in the days before the hearing, referred to in Minute (No.3) without objection at the time from Mr Williams. They contained a good deal of entirely irrelevant and at times wantonly scandalous material. In a memorandum filed today Mr Williams has made it clear that he objects to this material. If Mr Williams does not wish to have that material read or wishes to have it removed from the Court file for the purposes of the appeal he should make a specific application. However, I have no doubt that the Judge who hears the appeal will be able to form a clear view on what is relevant and put the rest to one side.

[10] Mr Hallett strongly criticised the ruling of Judge Hinton of 23 June 2010 refusing to grant an adjournment. While the notice of appeal is stated to be directed against the judgment of 18 October 2010, it is clear that much of the complaint relates to that ruling on 23 June 2010 declining this second application for adjournment. That issue will no doubt be traversed at the hearing of the substantive appeal.

[11] Amongst the material relied upon by Mr Hallett is an exchange of emails between him and his counsel, at the time Mr Meyrick. This exchange shows an interchange in relation to the initial 3 May 2010 fixture and the later 23 June 2010 fixture. I refrain from making any comment on the exchange as this will be a matter for the Judge who hears the appeal. The emails show that Mr Hallett was aware on 18 June 2010 that the defamation case would be in court on 23 June 2010. He says

now that he could not return because of the volcanic ash cloud caused by the eruption in Iceland. This was not a matter referred to in the emails between him and his counsel.

[12] In the course of submissions Mr Hallett stated that if there was no stay granted he could be adjudicated bankrupt on Tuesday, 15 February 2011 and that the appeal would be then rendered nugatory.

Consideration of relevant factors

[13] Mr Hallett has now filed an affidavit setting out his financial position. His assets appear to be limited to a motor vehicle worth about \$2,000. The affidavit is poorly drafted and Mr Williams has had only limited time to answer it. I am satisfied on an overview of the material before me that Mr Hallett has limited assets, and considerable debt. It appears that he is not able to meet the judgment or any significant part thereof.

The prospect of bankruptcy

[14] Generally a stay upon payment of a judgment sum would only be granted on provision of security.⁵ In *Hawkins v ANZ Banking Group (NZ) Ltd*⁶ the Court accepted that the probable effect of refusing a stay was that the appellant would go bankrupt and the appeal would not be prosecuted. Counsel agreed that it was highly unlikely that the Official Assignee would support it. Despite that the stay was denied. In the more recent decisions of *Petricevic v Bridgecorp Management Services Ltd (in rec)*,⁷ and *Cousins v Hislop*⁸ the Court of Appeal has confirmed that the fact that an appeal may be rendered nugatory by the lack of a stay is not in itself determinative of the application for a stay.

⁵ *Keung v GBR Investment Ltd* [2010] NZCA 396 at [12].

⁶ *Hawkins v ANZ Banking Group (NZ) Ltd* CA347/90, 16 July 1991 at 8.

⁷ *Petricevic v Bridgecorp Management Services Ltd (in rec)* [2008] NZCA 286 at [27]–[29].

⁸ *Cousins v Hislop* [2007] NZCA 377, (2007) 18 PRNZ 677 at [10] and [17]–[19].

[15] Nevertheless, it is quite clear that it is a relevant factor that must be taken into account: *Siemer v Stiassny*.⁹ In that case an interim stay was granted to enable the appellant to file evidence as to his current financial position.

Balancing the factors

[16] I am satisfied that if Mr Hallett is bankrupted on Tuesday, 15 February 2011, it is at least highly unlikely that the appeal will proceed. Therefore, in favour of the granting of a stay is the fact that the appeal will very likely be rendered nugatory if Mr Hallett goes bankrupt.

[17] It is also relevant that the judgment was by way of formal proof and that there are arguments as to the fairness of the procedure leading up to that hearing. There appear to be issues that go beyond the merits of the judgment itself.

[18] Also in favour is the fact that this is not one of those cases where a defendant is seeking to appeal a judgment on a longstanding debt. The amount in question is a sum ordered as damages for defamation by the Court. It was a sum fixed by the Court in its discretion, taking into account a number of factors, including the relative seriousness of the defamatory statements, the limited extent of publication, the fact that there was no television or newspaper audience involved, the hurt to Mr Williams and the injury to his reputation, and Mr Hallett's conduct.¹⁰ The total sum of \$140,000 included \$15,000 for punitive damages. While the proceedings do not involve any matter of public interest or importance, it is a point to note that Mr Hallett cannot be put into the category of a long-term reluctant debtor.

[19] Finally, to be weighed in the balance of convenience is the fact that the stay is only likely to be for a short period. The appeal is set down for hearing on Wednesday, 30 March 2011. Even taking into account judgment time, the stay is unlikely to be in effect for a long period of time after 30 March 2011. At best, if Mr Williams is successful in resisting the appeal and a judgment was delivered within a few weeks of the hearing, he will have only been delayed in executing the

⁹ *Siemer v Stiassny* CA150/06, 25 September 2006 at [14].

¹⁰ See [55] of the judgment of 18 October 2010.

judgment by two months. When the stay is for only a short period there tends to be less injustice to a stayed plaintiff.

[20] As against this I must weigh the injurious effect on Mr Williams if a stay is granted. He made a very strong submission asserting that Mr Hallett's behaviour in making the defamatory statements, and his alleged manipulation of the court system, mean that he should not be granted a stay. Mr Williams emphasised the grave effect on his reputation and wellbeing of the proceedings. Effectively he submitted that Mr Hallett is acting in an intemperate and malicious way towards him and that Mr Hallett is not entitled to receive any further leeway or relief from the Court. He also asserts that Mr Hallett has breached the injunction orders.

[21] While I have been impressed by the strength of Mr Williams' plea, he does not suggest that he has any need for payment of the judgment sum or that there is likely to be any injurious financial effect caused to him by a relatively short delay. If a stay is granted he suffers the frustration of not bankrupting Mr Hallett as he would otherwise be able to do, and the fact that the appeal will proceed. But the fact that he cannot stop the appeal in its tracks by bankrupting Mr Hallett is not a factor to be taken into account. While there is evidence of serial breaches of Court directions by Mr Hallett and extreme and intemperate allegations, the material does not go so far as to show the appeal to be not bona fide, or unable to proceed on its merits.

[22] In the end there is nothing to indicate that there is any specific prejudice to Mr Williams if there is this short stay. The only reservation is concern at the possibility, given events to date, that Mr Hallett may use the stay as an opportunity to breach the injunction orders, or to perpetrate more abuse, which would be a real injustice to Mr Williams.

Conclusion

[23] If the stay is not granted an injustice may be done. Mr Hallett will almost certainly be denied his right of appeal, which he would otherwise be able to exercise next month. His appeal may be hopeless, but that is not an issue that should be determined on this application. The possibility of real injustice to Mr Hallett

outweighs the injustice to Mr Williams of a limited delay to execution. Given the other background factors as to the nature of the claim and the hearing, I determine that there should be a stay on the monetary part of the judgment.

[24] There should not however be any stay of the orders by way of injunction. Mr Williams should have the benefit of those orders until the appeal is heard. Therefore, there is only a stay for that part of the judgment. Moreover, I reserve leave to Mr Williams to apply to the Court on three hours notice for a removal of the stay should Mr Hallett breach the injunction orders or take any steps to abuse the relief that has been given to him.

Result

[25] The best way forward procedurally is for the bankruptcy proceedings, which are due for call tomorrow, to stand adjourned and to be called for mention before the Judge who hears the appeal. This will save unnecessary appearances and will leave it for the Judge who hears the appeal to direct the next procedural step on the bankruptcy proceedings.

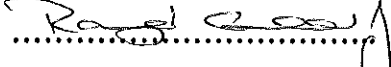
[26] The bankruptcy proceedings against Mr Hallett, which are CIV-2010-404-7488 listed for tomorrow 15 February 2011 at 10.45am are adjourned to be called for mention before the Judge who hears this appeal on 30 March 2011.

[27] There is a stay of execution of the monetary part of the judgment of 18 October 2010, being the damages granted at [57] of the judgment. The injunction orders set out at [60] of the judgment are not stayed.

[28] In the circumstances Mr Hallett obtains a stay, but it is a limited stay, and he is in breach of timetable orders. There will be no immediate order as to costs, with costs reserved in the long term.

[29] I reserve leave to the respondent to apply on three hours notice, reference to me in the first instance, for the stay to be removed.

[30] There are timetable issues relating to the substantive appeal which will be dealt with by way of separate Minute.


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Asher J