

Background

[2] In its determination dated 14 May 2024, the Authority ordered Citadel to pay the defendant, Eoin Miles, the sum of \$15,000 as compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act).¹

[3] The companies challenged the Authority's substantive determination on a non-de novo basis in this Court on 11 June 2024. At the same time, they filed an application for a stay of proceedings.

[4] In a later determination dated 25 June 2024, the Authority ordered that Citadel and Fortland pay costs to Mr Miles in the sum of \$9,071.55.²

[5] On 4 July 2024, Mr Miles sought a compliance order from the Authority in relation to the above awards, which totalled \$24,071.55.

[6] At a case management conference for the Authority hearing, it was directed, as agreed with the parties, that Mr Miles would file submissions on 6 September 2024 and Citadel would file submissions on 10 September 2024. Mr Miles's submissions were received on 6 September 2024 as directed. However, on 11 September 2024, counsel for Citadel contacted the Authority and advised that the company would be lodging its submissions the following day, 12 September 2024. By 17 September 2024, no submissions had been received, and there was no further communication from Citadel. The Authority proceeded to determine the matter on the papers, as had been agreed with the parties.³

[7] The Authority determined that it was just for an order to be made requiring Citadel to comply with its earlier determinations.⁴ It made further orders as follows:

[19] Citadel is ordered to pay Mr Miles the sum of \$15,000.00 in respect of compensation pursuant to Determination [2024] NZERA 285.

¹ *Miles v Citadel Capital Ltd* [2024] NZERA 285 (Member Robinson) at [196].

² *Miles v Citadel Capital Ltd* [2024] NZERA 376 (Member Robinson) at [35] and [36].

³ *Miles v Citadel Capital Ltd* [2024] NZERA 560 (Member Robinson) at [3]–[7].

⁴ At [18].

- [20] Citadel is ordered to pay Mr Miles the sum of \$9,000.00, and the sum of \$71.55 in respect of costs and the Authority filing fee pursuant to Determination [2024] NZERA 376).
- [21] Citadel is ordered to pay interest on the sums due in accordance with Schedule 2 of the Interest on Money Claims Act 2016. ...
- [22] Citadel is ordered to pay the sum of \$750.00 to Mr Miles as a contribution to his legal costs incurred in this application for the Compliance Order.
- [23] Citadel is ordered to comply as ordered above within 28 days of service of this determination.

(Emphasis omitted)

[8] On 30 September 2024, the plaintiffs filed an amended application for a stay to include an application to stay the compliance order made by the Authority. Accordingly, they now seek a stay of execution of the three determinations of the Authority.

[9] Mr Miles has also served Citadel with a statutory demand pursuant to s 289 of the Companies Act 1993 in relation to the awards made to him. Citadel has filed an originating application to set aside the statutory demand, and the matter will be heard by the High Court on 9 December 2024.

[10] There have been delays from both sides in the progress of this application, primarily from the plaintiffs. Notwithstanding those delays, the Court has accorded the application some priority due to the upcoming High Court hearing.

Legal framework

[11] A challenge does not operate as a stay of proceedings on a determination of the Authority.⁵ That reflects the principle that a successful litigant is ordinarily entitled to the fruits of their success.⁶ There are, however, circumstances in which a stay is appropriate, and the Court may order a stay of proceedings where a challenge against a determination of the Authority is pursued.⁷ It is up to an applicant to satisfy the

⁵ Employment Relations Act 2000, s 180.

⁶ *Duncan v Osborne Building Ltd* (1992) 6 PRNZ 85 (CA) at 87.

⁷ Employment Court Regulations 2000, reg 64.

Court that adequate grounds have been made out, and any orders made must be the least necessary to preserve the position of the challenging party.⁸

[12] In determining whether a stay ought to be granted, the Court must balance the interests of the parties and generally have regard to the following non-exhaustive list of factors:⁹

- (a) whether the challenge will be rendered ineffectual if a stay is not ordered;
- (b) whether the challenge is brought for good reasons and being pursued in good faith;
- (c) whether the successful party at first instance will be injuriously affected by a stay;
- (d) the extent to which a stay will impact on third parties;
- (e) the novelty and/or importance of the questions involved;
- (f) the public interest in the proceeding; and
- (g) the overall balance of convenience.

[13] Other factors, including the likely merits of any related challenge, can also be relevant.¹⁰ Ultimately, the overarching consideration is the interests of justice.

Submissions

[14] The plaintiffs submit that it is an abuse of process by Mr Miles to have sought to enforce the awards in his favour in both the Authority by way of a compliance order,

⁸ *Grove v Archibald* [1998] 2 ERNZ 125 (EmpC) at 128–129; and *Bathurst Resources Ltd v L&M Coal Holdings Ltd* [2020] NZCA 186, (2020) 25 PRNZ 341 at [19].

⁹ *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50 at [5]; and *Dymoocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* (1999) 13 PRNZ 48 (CA).

¹⁰ *Broadspectrum (NZ) Ltd v Nathan* [2017] NZCA 434, [2017] ERNZ 733 at [34].

and the High Court by way of a statutory demand. They are concerned that the refusal of a stay will have implications for the application to set aside the statutory demand.

[15] They also submit that if a stay is not granted, the challenge will be rendered ineffectual.

[16] The plaintiffs say that they challenge not only the Authority's findings that the defendant was unjustifiably disadvantaged, but also the quantum awarded, which they say was too high irrespective of any findings made on the disadvantage issue. They submit that the challenge is brought in good faith and for good reasons due to their belief that the Authority erred in its findings and did not place sufficient weight on various factors.

[17] The plaintiffs argue that Mr Miles would not be prejudiced by the stay as he would not be entitled to the award in any event if they are successful in their challenge. They note that his financial position is unclear and that there is a risk that the award would not be recoverable if the challenge was successful.

[18] They note that there are no third parties who would be affected by the stay and submit that there is no public interest in the proceedings. Finally, they submit that the overall balance rests with granting the stay because the challenge is likely to be successful, either in part or in full; that a stay is necessary to prevent an abuse of process and the predetermination of the set-aside application which is yet to be heard by the High Court; and that the substantive determination did not include a timeframe by which the plaintiffs must pay the award to the defendant.

[19] The defendant submits that he should not be denied the fruits of his success and that any further delay will significantly prejudice him as he has awaited payment since May 2024. He argues that the plaintiffs have brought their stay application as a strategy to delay compliance, rather than out of a genuine concern over recoverability or financial hardship. He says that such tactics have imposed financial and emotional strain on him.

[20] He argues that public interest counts against awarding the stay as it would undermine public confidence to do so.

[21] Mr Miles argues that the plaintiffs have not demonstrated any specific harm they would suffer if a stay was not imposed and notes that there is no evidence to support their claim that they would be unable to recover the awarded amounts if the stay is not granted.

Analysis

[22] The default position is that Mr Miles, as the successful party in the Authority, is entitled to receive the sum that Citadel was ordered to pay him.

[23] The question is whether it has established that the default position should be displaced.

Effect of no stay on the challenge

[24] None of the parties has provided any evidence as to their financial means or financial position.

[25] In relation to the plaintiffs' situation, I note that there is an order of this Court that they pay costs in relation to a previous application, which also remain unpaid. However, they have not said that they are unable to pay the sums owing; rather, they indicate that they should not be required to do so.

[26] Mr Credo, counsel for the plaintiffs, submits that the plaintiffs' concern about the defendant's financial position and inability to repay sums is not speculative. He says that while Mr Miles's financial position was initially unclear, his affidavit dated 3 October 2024 is evidence that there is a risk that any sums paid to him would not be recoverable. Mr Miles refers in that affidavit to not having the financial resources to retain legal counsel, and generally to financial pressure. Other than that, there is no evidence of his financial position. While this is sparse, I accept that it indicates a risk in relation to his ability to repay any sums if his defence of the challenge is unsuccessful. This factor points in favour of granting a stay.

Merits of the challenge

[27] Despite the plaintiffs strongly urging that the merits lie with their cases, it is not possible to assess them at this stage. While this is not a de novo challenge, the companies take issue with both the substantive findings of the Authority and the quantum ordered. The evidence and documentation being relied upon by each party are yet to be considered by the Court. So it is difficult to predict with any certainty how the evidence will unfold or what the outcome will be.

[28] Notwithstanding my findings in relation to the merits, there is always a possibility that the challenge will succeed. However, that does not of itself warrant a stay. This factor is neutral.

Is the challenge brought and pursued in good faith?

[29] Mr Miles submits that the challenge is not brought in good faith and, along with this application for a stay, is brought merely to delay him in receiving his awards. However, there is no evidence to suggest that the challenge itself is not brought in good faith. The plaintiffs have set out the ways in which they consider the Authority erred. It remains to be seen whether or not they are successful.

[30] That said, I accept Mr Miles's submission in relation to how these proceedings have been conducted. There has been significant delay on the part of the plaintiffs in meeting timetable directions, both in the Authority and the Court, and it is understandable that he is frustrated by the way in which they have conducted themselves. While these are procedural matters that may ultimately affect any costs orders and are not necessarily indicators of a lack of good faith in relation to the proceedings themselves, they do raise concerns that the challenge is not being pursued diligently or in good faith. These factors count against the grant of a stay.

Whether the successful party will be injuriously affected by a stay

[31] Mr Miles submits that ordering a stay would be contrary to the interests of justice and would be detrimental to him. He says that, as the successful litigant, he should be entitled to the fruits of his success. I accept that he is likely to suffer adverse

consequences if a stay was granted and he was not able to access the monetary awards. This factor points away from a stay being granted.

Novel and important issues and the public interest

[32] The plaintiffs say there is no public interest in this matter in terms of there being a novel or interesting point of law. I agree. However, all parties submit that there is public interest in ensuring the integrity of processes and preventing an abuse of them, with each party submitting that this factor is in their favour. I consider that it is neutral.

Overall balance of convenience

[33] Turning to consider the balance of convenience, the companies have not offered any form of concession to preserve Mr Miles's interest in the face of their challenge, whereas Mr Miles has indicated,¹¹ as an alternative, that the sums could be paid into Court.

[34] Given the evidence filed by Mr Miles in relation to his financial position, I consider that there is some risk that if the sums are paid to him, they may become unrecoverable. However, I agree that it would be unfair for the plaintiffs to avoid paying the amounts awarded against them altogether, particularly in circumstances where there are questions as to whether the proceedings have been diligently pursued.

[35] Accordingly, I consider that the balance of convenience and interests of justice favour the granting of a stay, but on the condition that the amounts in question are paid into Court.

[36] I make the following orders:

- (a) A stay of proceedings is granted in relation to the Authority's determinations dated 14 May 2024, 25 June 2024 and 17 September 2024 on the following conditions:

¹¹ In an earlier draft notice of opposition to the stay application dated 20 August 2024.

- (i) Within 14 days of the date of this judgment, the plaintiffs will deposit the sum of \$24,821.55 (being the total of \$15,000,¹² \$9,071.55¹³ and \$750¹⁴) into Court.
 - (ii) The sum in [36](a)(i) will be held in an interest-bearing account pending determination of the plaintiffs' challenge.
 - (iii) The sum in [36](a)(i) will be paid out on further order of a Judge of the Court or on receipt by the Court of a joint memorandum signed by both parties' representatives.
- (b) If the sum in [36](a) above is not paid into Court within 14 days, then the stay of proceedings will lapse, and the defendant will be free to enforce the judgments.
- (c) The plaintiffs' challenge is to be pursued diligently.

[37] Both parties have had a measure of success in this application. Accordingly, costs shall lie where they fall.

Kathryn Beck
Judge

Judgment signed at 2.45 pm on 12 November 2024

¹² *Miles*, above n 1, at [196].

¹³ *Miles*, above n 2, at [35]–[36].

¹⁴ *Miles*, above n 3, at [22].