IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKAURAU

[2024] NZEmpC 33
EMPC 36/2024

IN THE MATTER OF	an application for leave to extend the time to file a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for stay of execution
BETWEEN	SPRING 2017 LIMITED Applicant
AND	TEPORA TAIFAU Respondent

Hearing: On the papers

Appearances: M Meyrick, agent for applicant
S Greening and K Hudson, counsel for respondent

Judgment: 28 February 2024

INTERLOCUTORY JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS
(Application for stay of execution)

---

[1] Spring 2017 Ltd (the company) has applied for a stay of orders made against it by the Employment Relations Authority.[1] In its determination the Authority ordered the company to pay Ms Taifau the sum of $19,137.24 gross by way of wage arrears, unpaid notice and distress compensation for her unjustified dismissal.[2] An application for urgency was filed with the application for a stay. I granted urgency having regard to the circumstances identified in the documentation before the Court.[3]

---

1 *Taifau v Spring 2017 Ltd* [2023] NZERA 396 (Member Larmer).
2 At [196].
3 *Spring 2017 Ltd v Taifau* EMPC 36/2024, 12 February 2024.

[2] In parallel the applicant filed an application for leave to extend time to file a challenge. Leave is required because a challenge was not filed within the statutory time period for doing so.[4] The applicant says that it mistakenly filed the statement of claim in the District Court.

[3] A telephone conference was convened with the parties' representatives on 15 February 2024 and timetabling orders were made by agreement for the filing and service of documentation in support of and in opposition to the application for a stay. It was agreed that the application could be dealt with on the papers.

[4] The starting point is that a challenge to a determination of the Employment Relations Authority does not operate as a stay.[5] That reflects the general position that a successful litigant at first instance is entitled to the fruits of their success. There may however be circumstances in which a stay is appropriate, and reg 64 of the Employment Court Regulations 2000 provides that the Court may order a stay of proceedings where a challenge against a determination of the Authority is pursued. It is up to an applicant to satisfy the Court that adequate grounds have been made out where a money judgment has been obtained in the first instance.[6]

[5] In determining whether a stay ought to be granted the Court generally has regard to the following factors, to the extent that they are engaged in a particular case:[7]

(a) whether the challenge will be rendered ineffectual if a stay is not granted;

(b) whether the challenge is brought and pursued in good faith;

---

4 See Employment Relations Act 2000, s 179(2).

5 Employment Relations Act 2000, s 180.

6 See, for example, *Bathurst Resources Ltd v L&M Coal Holdings Ltd* [2020] NZCA 186, (2020) 25 PRNZ 341 at [19]. While this judgment was unrelated to stay applications in this Court it has been cited with approval in a number of Employment Court judgments (such as *Jeon v Labour Inspector of the Ministry of Business, Innovation and Employment* [2023] NZEmpC 114 at [6]; and *Pretorius v Board of Trustees of Taupo Intermediate School* [2023] NZEmpC 189 at [42]).

7 See *Broadspectrum (New Zealand) Ltd v Nathan* [2017] NZCA 434, [2017] ERNZ 733 at [34], applying *Keung v GBR Investment Ltd* [2010] NZCA 396, [2012] NZAR 17 at [11], and *Dymocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* (1999) 13 PRNZ 48 (HC) at [9].

(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) any public interest in the proceeding; and

(g) the overall balance of convenience.

[6] It is the first of these factors that the applicant primarily relies on, namely the respondent's financial position and whether she would likely be able to refund any money in the event that the proposed challenge is successful. The applicant also refers to its own financial position, and the impact on it if no stay is granted and the Authority's orders are enforced.

[7] The affidavit evidence from the company is vague and contains unsupported assertions about the respondent, a number of which are irrelevant to the application before the Court. I accept, based on the respondent's affidavit, that at present she is financially constrained. However she is trying to find alternative work and is currently taking steps to meet her obligations. It is by no means certain what her financial position will be if and when the company's challenge is heard and decided; that is some way off and is, of itself, dependent on the company obtaining leave. While the respondent's current financial position is relevant, it is not determinative of the application.[8]

[8] There is no evidence before the Court in respect of the company's concerns about its financial position and the impact on it if the stay is not granted. I note, however, that if the company is in a perilous financial state a stay may well serve to increase the prejudice faced by the respondent.

---

[8] See *SP Blinds Ltd v Hogan* [2022] NZEmpC 104, [2022] ERNZ 416 at [11]–[14].

[9] Other matters are relevantly weighed into the mix. The company was ordered to make payment as long ago as 23 August 2023, failed to do so, and sought a stay at the 11th hour and only after the bailiff became involved. Ongoing delays in making payment have clearly adversely impacted on the respondent.

[10] As the Court of Appeal observed in *Bathurst Resources Ltd v L&M Coal Holdings Ltd*, orders for stay should be approached with restraint, being the least necessary to preserve the losing party's position against the prospect of an appeal succeeding. The challenging party needs to establish the basis for a stay and can be expected, where a money judgment is involved, to make some concession, such as an offer to make a payment into Court pending the outcome of the appellate process.[9] The applicant has made no such concession in this case. And it remains to be determined whether the challenge will proceed, in light of the fact that one was not filed within time and an application for leave to extend time has yet to be decided.

[11] For completeness, no issues were raised by the company in respect of the likely merits of the proposed challenge; whether the proposed challenge is pursued in good faith or third party interests. Nor was it suggested that the proposed challenge would (if allowed to proceed) raise any novel or important issues.

[12] I accept that the company may be adversely impacted if no stay is granted but I must balance that against other relevant factors, including the adverse effect of a stay on the respondent and broader interests of justice. In the circumstances I am not satisfied that a stay ought to be granted, and I decline to do so. That means that the Authority's determination in the respondent's favour remains enforceable.

[13] I now turn to the application for leave to extend time to file a challenge, which is opposed by the respondent. The respondent has now filed and served a notice of opposition. The timetable for the filing of submissions is set out at paragraph [4] of my minute dated 15 February 2024.

---

9 *Bathurst Resources Ltd v L&M Coal Holdings Ltd*, above n 6, at [19].

[14] The file is then to be referred to me for a decision on the papers unless either representative advises, prior to the time scheduled for last filing of documentation, that they wish to be heard in person.

[15] The respondent is entitled to costs on the application for a stay. The parties are encouraged to seek to agree costs, but if they are unable to do so I will receive memoranda.[10]

Christina Inglis
Chief Judge

Judgment signed at 4.50 pm on 28 February 2024

[10] Noting that the respondent is legally aided. For a discussion as to the applicable approach in such circumstances see *Curtis v Commonwealth of Australia* [2019] NZCA 126 at [22], as applied in *Reborn Holdings Ltd v Sharan* [2019] NZEmpC 61; *McKinlay v Wellington Cosmetic Clinic Ltd* [2021] NZEmpC 211; *UXK v Talent Propeller Ltd* [2021] NZEmpC 223; and *UXK v Talent Propeller Ltd* [2022] NZEmpC 178.