

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

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

**[2025] NZEmpC 128  
EMPC 436/2024**

IN THE MATTER OF	A challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for a stay of execution
BETWEEN	ISHER ENTERPRISES LIMITED First Plaintiff
AND	KULVINDER SINGH Second Plaintiff
AND	LIONMEAD CAPITAL GROUP LIMITED Third Plaintiff
AND	ARUSHI ARUSHI Defendant

Hearing: On the papers

Appearances: Arunjeev Singh, counsel for first plaintiff  
JA Hope, counsel for defendant

Judgment: 27 June 2025

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**INTERLOCUTORY JUDGMENT OF JUDGE KATHRYN BECK  
(Application for a stay of execution)**

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[1] The plaintiffs have applied for a stay of execution of orders made against them by the Employment Relations Authority.

[2] In its determination dated 3 October 2024, the Authority ordered the first plaintiff, Lionmead Capital Group Ltd (Lionmead), to pay the defendant, Arushi Arushi, the following sums:<sup>1</sup>

- (a) \$10,000 as a debt for a premium payment;
- (b) \$6,316.26 as arrears of wages and annual holiday pay;
- (c) \$656.66 as arrears of public holiday pay;
- (d) interest on the premium debt and arrears; and
- (e) \$2,400 as a penalty.

[3] The Authority ordered the third plaintiff, Isher Enterprises Ltd (Isher), to pay the defendant the following sums:<sup>2</sup>

- (a) \$10,000 as a debt for a premium payment;
- (b) \$54,207.90 as arrears of wages and annual holiday pay;
- (c) interest on the premium debt and arrears;
- (d) \$2,400 as a penalty; and
- (e) \$34,000 as compensation.

[4] The amounts were ordered to be paid by both companies within 21 days of the date of the determination, that is by 24 October 2024.<sup>3</sup>

[5] Leave was also granted to recover the premium debts, arrears of wages, holiday and leave pay, and interest from the second plaintiff, Kulvinder Singh, in the event that Lionmead and Isher were unable to pay.

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<sup>1</sup> *Arushi v Isher Enterprises Ltd* [2024] NZERA 615 at [147].

<sup>2</sup> At [149].

<sup>3</sup> At [147] and [149].

[6] On 29 November 2024, the Authority ordered the plaintiffs to pay the defendant \$28,318.20 in costs and disbursements.<sup>4</sup> It held that they were jointly and severally liable to pay such sums.

[7] In total, the plaintiffs have been ordered to pay the defendant \$148,299.02 (including costs). The first and third plaintiffs have also been ordered to each pay a penalty of \$5,600 into the Crown bank account.<sup>5</sup>

[8] The plaintiffs have filed a de novo challenge to the Authority's determinations and also seek a stay over the sums ordered to be paid.

### **Legal framework**

[9] A challenge does not operate as a stay of proceedings on a determination of the Authority.<sup>6</sup> That reflects the principle that a successful litigant is ordinarily entitled to the fruits of their success.<sup>7</sup> However, there are 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.<sup>8</sup> The challenging party must satisfy the Court that adequate grounds have been made out.<sup>9</sup> Any orders made must be the least necessary to preserve the position of the challenging party. Where a monetary judgment is involved, that party can be expected to make some concession, such as an offer to make a payment into court pending the outcome of the appellate process.<sup>10</sup>

[10] 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:<sup>11</sup>

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<sup>4</sup> *Arushi v Isher Enterprises Ltd* [2024] NZERA 715 at [22].

<sup>5</sup> *Arushi v Isher Enterprises Ltd*, above n 1, at [148] and [150].

<sup>6</sup> Employment Relations Act 2000, s 180.

<sup>7</sup> *Duncan v Osborne Building Ltd* (1992) 6 PRNZ 85 (CA) at 87.

<sup>8</sup> Employment Court Regulations 2000, reg 64.

<sup>9</sup> *Grove v Archibald* [1998] 2 ERNZ 125 (EmpC) at 128–129.

<sup>10</sup> *Bathurst Resources Ltd v L&M Coal Holdings Ltd* [2020] NZCA 186, (2020) 25 PRNZ 341 at [19].

<sup>11</sup> *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).

- (a) whether the challenge will be rendered ineffectual if a stay is not ordered;
- (b) whether the challenge is brought for good reasons and 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.

[11] Other factors, including the likely merits of any related challenge, can also be relevant.<sup>12</sup> Ultimately, the overarching consideration is the interests of justice.

### **Affidavits and submissions have been filed**

[12] The plaintiffs submit that their claim has merit and is likely to succeed. They say they are not in a financial position to pay the whole of the amount under the determination due to the current economic environment and changes to the nature of their businesses. They say they are able to deposit \$30,000 of the \$119,980.82 awarded into court. They consider that no prejudice will be caused to the defendant if execution of the determination is stayed pending the determination of proceedings.

[13] The defendant submits that as the successful party, she is entitled to the fruits of her success. She says she will be injuriously affected by a stay as she has limited assets and savings. In addition, she owes a significant amount in legal fees in relation to the prosecution of her personal grievance in the Authority. She disagrees that the plaintiffs' case has merit. She considers the Authority's determination robust and

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<sup>12</sup> *Broadspectrum (NZ) Ltd v Nathan* [2017] NZCA 434, [2017] ERNZ 733 at [34].

based on findings of credibility in relation to the evidence. Further, she is concerned that the plaintiffs will move assets out of the jurisdiction and/or otherwise dissipate them.

## **Analysis**

*Will the challenge be rendered ineffectual if a stay is not granted?*

[14] The plaintiffs argue that if a stay is not granted but they are ultimately successful, their success will be ineffectual due to the defendant's precarious financial position. If they are successful, but the defendant receives all the amounts awarded by the Authority, they say there will be no way to recover those amounts from her. On the other hand, the plaintiffs are "existing companies and paying their liabilities and doing normal business."

[15] There is some merit to this argument. While Ms Arushi is in permanent employment and has regular earnings, she has incurred significant debt largely because of the need to pursue her claims through the Authority. She has not stated that she will be able to repay any sums if the plaintiffs are successful, and it is unclear whether she would be able to do so.

[16] However, Ms Arushi's position is understandable given that a significant amount of the orders in her favour are for wages owing. Given the nature of the findings, although she has legal aid, there is an equally legitimate concern as to whether her defence of the challenge will be ineffectual if a stay is granted on the terms currently sought.

*Was the challenge brought for good reasons, and is it being pursued in good faith?*

[17] There is nothing in the parties' submissions and evidence to indicate that the challenge is not brought for good reasons or not being pursued in good faith.

*Will the successful party at first instance be injuriously affected by a stay?*

[18] A stay will delay the defendant from receiving the fruits of her success in the Authority. She has been forthcoming about her difficult financial circumstances. She

is a solo mother with a young child, works full time for a government department, and has a small income from a business. She has accumulated debts as a result of her dismissal, which were the subject of her claim. These debts total \$110,036.96. Her largest debt is to her former lawyers. It is clear that she will be injuriously affected by a stay as it will prevent her from paying off her debts, which are a significant burden.

*Will the stay have an impact on third parties?*

[19] The plaintiffs have not suggested that a stay will have an impact on any third parties. As noted above, the defendant is a solo mother with a young child. Any delay in her receiving the fruits of her success will inevitably impact her child.

*Is there any novelty and/or importance in the questions involved in the challenge?*

[20] None of the parties has suggested that there are novel or important questions arising in this challenge, although of course they are necessarily important to each of them.

*Is there any public interest in the challenge?*

[21] None of the parties has suggested that there is any particular public interest in this challenge other than the public interest in an employee being able to recover minimum entitlements and premiums paid. A significant proportion of the amount owing relates to the enforcement of the defendant's minimum entitlements. However, the issues are not new.

*Are the merits of the plaintiff's challenge clear enough to be relevant?*

[22] All parties in this case consider that the merits lie with them. However, it is generally difficult to assess the merits of a challenge at an interlocutory stage, particularly where a de novo challenge has been filed.<sup>13</sup> That observation is true of the present challenge which has not yet been heard.

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<sup>13</sup> Although dealing with an application to bring an appeal out of time, the Supreme Court made helpful observations about the necessarily superficial nature of any consideration of the merits of cases at an interlocutory stage in *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [39].

*Balance of convenience/interests of justice*

[23] Considering the balance of convenience, while the plaintiffs have asserted financial difficulties they have not provided any evidence in support of their claims. Further, such assertions count against a stay that does not provide security to the defendant. The amount offered to be paid into court is approximately 20 per cent of the total amount awarded. Ms Arushi is understandably concerned about the dissipation of assets between now and any hearing, as well as her own personal circumstances.

[24] Mr Hope, counsel for the defendant, has suggested a compromise solution of:

- (a) payment of \$50,000 directly to the defendant;
- (b) payment of a further \$50,000 into court;
- (c) orders against the second plaintiff, Kulvinder Singh, up to the amount of \$81,180.82 in the event that Isher and Lionmead are unable to pay;
- (d) an order requiring each of the three plaintiffs to file and serve a sworn statement setting out their assets, liabilities, balance sheets and cashflow projections; and
- (e) undertakings that Isher and Lionmead will not be permitted to be removed from the Companies Register and will not be wound up voluntarily.

[25] This proposal has some attraction owing to the risk sharing among the parties.

[26] The plaintiffs have suggested that \$30,000 be paid into court in three instalments. This does not address the interests of justice in this instance. Nor is it a sufficient concession in the circumstances.<sup>14</sup>

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<sup>14</sup> See *Bathurst Resources Ltd*, above n 10, at [19].

[27] There are competing interests at play. It is necessary to balance the defendant's right to the fruits of her success against the risk that she is unable to repay such sums if the plaintiffs are successful in their challenge. It is then necessary to balance the plaintiffs' precarious financial circumstances against the interests of justice in having the defendant's awards secured.

[28] Accordingly, I consider that the balance of convenience and the interests of justice favour a compromise as suggested by Mr Hope. However, I do not consider that the ancillary orders he proposes in [24](d) and [24](e) are appropriate or necessary if payments are made as ordered below. Further, in the circumstances, it is appropriate to make orders in relation to the entirety of the orders made by the Authority in favour of the defendant, rather than in the amounts proposed by Mr Hope. It is also appropriate to have regard to the nature of the payments ordered. Priority should be given to payment of minimum entitlements. The orders below reflect that priority.

### **Outcome**

[29] A stay against execution of the judgment will be granted on the following basis:

- (a) Isher (or Kulvinder Singh if it is unable) is to pay to the defendant arrears of wages and holiday pay in the amount of \$54,207.90 within 21 days of the date of this judgment.
- (b) Lionmead (or Kulvinder Singh if it is unable) is to pay to the defendant arrears of wages and holiday pay (including public holiday pay) in the amount of \$6,972.92 within 21 days of the date of this judgment.
- (c) The balance of sums owing, being \$12,400 for Lionmead, \$46,400 for Isher Enterprises, and costs totalling \$28,318.20, is to be paid into court within 28 days of the date of this judgment.

[30] Provided that such sums are paid to the defendant and into court, the defendant is stayed from enforcing the Authority's determinations. If such sums are not paid

within the timeframes set out above, the defendant is free to enforce the Authority's determinations.

[31] Both parties have had a measure of success and therefore it is appropriate for costs to lie where they fall.

Kathryn Beck  
Judge

Judgment signed at 12 pm on 27 June 2025