

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

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

**[2025] NZEmpC 17  
EMPC 379/2023**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for variation of a stay of execution order
BETWEEN	VGM Plaintiff
AND	JXC Defendant

Hearing: On the papers

Appearances: S Mitchell KC and A Drumm, counsel for plaintiff  
M Dew KC and D Josephs, counsel for defendant

Judgment: 13 February 2025

---

**CONSENT INTERLOCUTORY JUDGMENT (NO 3) OF JUDGE M S KING  
(Application for variation of a stay of execution order)**

---

[1] On 23 December 2024 I issued a judgment declining an application to stay the execution of two determinations of the Employment Relations Authority in this matter.<sup>1</sup> The plaintiff has now paid the Authority's award of costs to the defendant, but the substantive awards remain unpaid.

---

<sup>1</sup> *VGM v JXC* [2024] NZEmpC 256; *JXC v VGM* [2023] NZERA 554 (Member Doyle); and *JXC v VGM* [2023] NZERA 636 (Member Doyle).

[2] On 5 February 2025 the plaintiff applied for the Court’s judgment to be varied or rescinded due to a material change of circumstances.<sup>2</sup> The circumstances included:

- (a) The defendant served a statutory demand on 14 January 2025 for the balance of the awards made by the Authority in its determinations.
- (b) The parties then reached a proposed settlement and filed a consent memorandum on 23 January 2025, which resulted in the February 2025 fixture for the substantive matter being vacated. The proposed settlement fell apart shortly thereafter.
- (c) The parties are still attempting to negotiate a settlement agreement; however, the plaintiff is concerned that if a stay is not granted, the enforcement process will progress and the plaintiff could be placed into liquidation.
- (d) The plaintiff has the ability to pay the Authority’s awards into Court; however, it needs a short amount of time to make such arrangements.
- (e) The defendant initially opposed the plaintiff’s application; however, the parties have now reached an agreement for the Court’s judgment to be varied and for a conditional stay to be granted.

[3] The parties seek a variation of the Court’s judgment so that the Authority’s determination dated 26 September 2023 is stayed on conditions.<sup>3</sup> In the event the conditions are not complied with the stay will be discharged.

[4] It is undesirable for an issue decided by an interlocutory ruling to be relitigated in the same proceeding. Rule 7.52 of the High Court Rules 2016 addresses this and limits parties who fail on interlocutory applications from bringing a subsequent application without leave of the Court, with leave only being granted in special circumstances.<sup>4</sup> However, r 7.49 allows a party to apply to the Court to vary or rescind

---

<sup>2</sup> High Court Rules 2016, rr 7.49 and 7.52.

<sup>3</sup> *JXC v VGM* [2023] NZERA 554.

<sup>4</sup> *Stephenson v Jones* [2014] NZHC 1604 at [7].

an order or decision. The Court may vary or rescind the order or decision if satisfied that it is wrong. Rule 7.49 can be engaged where there has been a material change of circumstances.<sup>5</sup>

[5] I am satisfied that there has been a material change in circumstances such that the previous decision of the Court is now wrong. The material change in circumstances includes that the parties, upon reaching a settlement in principle, relied on that to resolve both this Court and the High Court proceedings, only to find the settlement falling apart, the hearing of the matter before this Court delayed until later this year, and liquidation proceedings in the High Court hanging over the plaintiff's head. The parties continue to seek to negotiate a settlement and have agreed that a conditional stay should be granted. In these circumstances it is appropriate to vary the earlier judgment of the Court. The following orders are made accordingly:

- (a) The plaintiff will pay into the Employment Court registry the sum of \$15,000 by 4 pm on 14 February 2025 (less the \$11,438.38 already paid to the defendant).
- (b) The sum of \$27,000 will be paid into the Employment Court registry by the plaintiff by 4 pm on 28 February 2025.
- (c) The case will not be set down until the plaintiff has complied with the payments to be made by the dates set out above.
- (d) The sums paid into Court by the plaintiff are to be held by the Court to protect the Authority's award in the defendant's favour. If the plaintiff's challenge is unsuccessful, the sums held by the Court are to be paid to the defendant.

[6] Costs are reserved.

M S King  
Judge

Judgment signed at 2.15 pm on 13 February 2025

---

<sup>5</sup> *Carter v The Coroner's Court at Wellington* [2015] NZHC 2998 at [11].