

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

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

**[2025] NZEmpC 261  
EMPC 208/2025**

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

AND IN THE MATTER OF an application to strike out a proceeding

BETWEEN LONGEVITY CONSTRUCTION  
LIMITED  
First Plaintiff

AND ANTHONY RONALD DAMIAN CORIN  
Second Plaintiff

AND DIEDRIK VAN HEERDEN  
Defendant

**EMPC 209/2025**

IN THE MATTER OF a challenge to a determination of the  
Employment Relations Authority

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BETWEEN LONGEVITY CONSTRUCTION  
LIMITED  
First Plaintiff

AND ANTHONY RONALD DAMIAN CORIN  
Second Plaintiff

AND ROBERT WILLIAMS  
Defendant

Hearing: 10 October 2025  
(Heard at Auckland)

Appearances: A Corin in person and as agent for the first plaintiff  
N Sadie, advocate for the defendants

Judgment: 5 December 2025

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**INTERLOCUTORY JUDGMENT OF JUDGE KATHRYN BECK**  
**(Application for stay of execution)**  
**(Application to strike out a proceeding)**

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[1] The plaintiffs have applied for a stay of execution of orders made against them by the Employment Relations Authority.<sup>1</sup> The defendants oppose the applications.

[2] The defendants also apply to strike out or, in the alternative, to stay the proceedings with conditions. The plaintiffs oppose the applications.

[3] This judgment resolves both applications.

**Plaintiffs' application for a stay of execution**

[4] In relation to Mr van Heerden, the Authority ordered Longevity Construction Ltd (Longevity) to pay him the following sums:<sup>2</sup>

- (a) \$770.12 wage arrears;
- (b) \$500 of a \$1,000 penalty for breaches of the Wages Protection Act 1983 with the balance paid to the Crown;
- (c) \$206,138.47 remedies for unjustified dismissal, consisting of:
  - (i) \$166,153.85 gross lost remuneration under s 128(3) of the Employment Relations Act 2000 (the Act);

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<sup>1</sup> *Van Heerden v Longevity Construction Ltd* [2025] NZERA 217; *Williams v Longevity Construction Ltd* [2025] NZERA 215.

<sup>2</sup> *Van Heerden v Longevity Construction Ltd*, above n 1, at [119].

- (ii) \$4,984.62 gross as the KiwiSaver compulsory employer contribution on his award of lost remuneration, which was awarded to him as a lost benefit under s 123(1)(c)(ii) of the Act;
- (iii) \$35,000 without deduction, as distress compensation under s 123(1)(c)(i) of the Act.

[5] The Authority also ordered Mr Corin, the second plaintiff, to pay Mr van Heerden a penalty of \$500 for aiding and abetting Longevity's breaches of his employment agreement. Mr Corin was also ordered to pay \$500 penalties to the Crown.

[6] Additionally, the Authority granted Mr van Heerden leave, under s 142Y(2) of the Act to recover wage arrears and other money from Mr Corin personally if Longevity defaulted on paying him. Such leave was granted on the basis that the Authority found that Mr Corin was a person who was involved in Longevity's breach of employment standards as defined by s 142Y of the Act.

[7] The amounts were ordered to be paid within 28 days of the date of the determination, that is by 14 May 2025.

[8] In relation to Mr Williams, the Authority ordered Longevity to pay Mr Williams the following sums:<sup>3</sup>

- (a) \$10,465.44 gross unpaid notice pay arrears plus interest from 18 April 2024 up to the date of the determination, being 16 April 2025;
- (b) \$30,515.63 gross lost remuneration plus the CEC under s 128(3) of the Act;
- (c) \$1,977.60 gross holiday pay on the notice pay arrears and his lost remuneration up to 26 May 2024; and

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<sup>3</sup> *Williams v Longevity Construction Ltd*, above n 1, at [70].

- (d) \$25,000 without deduction distress compensation under s 123(1)(c)(i) of the Act.

[9] No orders were made against Mr Corin personally. The amounts were ordered to be paid by 15 May 2025.<sup>4</sup>

[10] The plaintiffs in each proceeding have filed a de novo challenge to the Authority's determinations and seek a stay over the sums ordered by the Authority.

### **Legal framework**

[11] A challenge does not operate as a stay of proceedings on a determination of the Authority.<sup>5</sup> That reflects the principle that a successful litigant is ordinarily entitled to the fruits of their success.<sup>6</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>7</sup> The challenging party must satisfy the Court that adequate grounds have been made out.<sup>8</sup> Any orders made must be the least necessary to preserve the position of the challenging party, and that party can be expected, where a monetary judgment is involved, to make some concession, such as an offer to make a payment into court pending the outcome of the appellate process.<sup>9</sup>

[12] In determining whether a stay ought to be granted, the Court must balance the interests of the parties and generally has regard to the following non-exhaustive list of factors:<sup>10</sup>

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

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<sup>4</sup> At [71].

<sup>5</sup> Employment Relations Act 2000, s 180.

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

<sup>7</sup> Employment Court Regulations 2000, reg 64.

<sup>8</sup> *Grove v Archibald* [1998] 2 ERNZ 125 (EmpC) at 128–129.

<sup>9</sup> *Bathurst Resources Ltd v L&M Coal Holdings Ltd* [2020] NZCA 186, (2020) 25 PRNZ 341 at [19].

<sup>10</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).

- (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.<sup>11</sup> Ultimately, the overarching consideration is the interests of justice.

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

[14] The plaintiffs apply for a stay on the basis that if it is not granted, they will be required to pay significant sums, and if their challenges succeed, recovery from the defendants may prove difficult or impossible, thereby rendering the challenges nugatory. They argue that the defendants' positions are preserved by the ongoing accrual of interest in the Authority's awards. They say that their rights of challenge will be undermined if a stay is conditional on payment into court or a trust account, imposing a financial hardship on them and prejudging the merits of the challenges.

[15] The plaintiffs argue that there is no prejudice to the defendants as they remain entitled to pursue enforcement should the challenges fail. They submit that the risk of prejudice to the defendants is minimal compared with the risk of irrecoverability for them if immediate payment is required. They say that it is in the interests of justice that stays be granted without conditions.

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<sup>11</sup> *Broadspectrum (NZ) Ltd v Nathan* [2017] NZCA 434, [2017] ERNZ 733 at [34].

[16] In his affidavit, Mr Corin said that requiring payment into a trust account before the challenges are heard would cause significant financial prejudice and hardship, including the risk of insolvency for Longevity which might render the challenges nugatory.

[17] The defendants oppose the applications for a stay. They say that to date, the challenges have in effect operated as stays because of the plaintiffs' failure to comply with the Authority's orders. They submit that the challenges have not been pursued diligently and the applications for a stay not filed promptly. They propose that the amounts be paid into court to preserve all parties' positions, which would address the plaintiffs' concern in relation to recoverability. They argue that they are currently prejudiced by the plaintiffs' ongoing failure to comply, and have sought compliance orders in the Authority.

[18] The defendants argue that there are no novel or important issues of law involved that would justify stays and that the balance of convenience and overall justice favour a refusal of the applications. They note that the plaintiffs' argument that interest will continue to accrue provides them with no immediate relief. They are concerned at the risk of dissipation of assets, particularly in the face of what they say are statements by Mr Corin indicating an intention to put Longevity into liquidation rather than pay the defendants.

[19] They say that the challenges have not been pursued diligently and that the plaintiffs' failure to file applications promptly have delayed progress of the proceedings.

[20] The defendants also made submissions as to why the plaintiffs should not be granted leave to extend time to make applications for a stay. However, this indicates a misunderstanding on their part. While a stay should be filed as soon as practicable or at the same time as a challenge, the plaintiffs were not required to seek leave to make these applications. I have taken the submissions made by the defendants in relation to delay as having been made in support of their concern that the challenges have not been pursued expeditiously.

## **Analysis**

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

[21] The defendants are not seeking that the amounts ordered by the Authority be paid to them directly, although they would be entitled to do so. They have sought that the amounts be paid into court. Accordingly, the plaintiffs' concern in relation to the irrecoverability of the sums, and therefore the challenges being rendered ineffectual if stays are not granted, is answered.

[22] However, the plaintiffs' primary argument rests on their impecuniosity. They say they are not in a financial position to pay the amounts and that to not grant the applications would put them in a position where they would almost inevitably further breach the Authority's orders. Of course, that would not necessarily prevent the plaintiffs pursuing their challenges; it would simply mean that the defendants were entitled to take steps to enforce the Authority's orders.

[23] Mr Corin provided evidence of Longevity's financial difficulties due to a number of circumstances, including a general financial downturn. A meeting of creditors was held earlier this year and a compromise has been entered into in respect of a number of preferential and unsecured creditors. However, the defendants are listed as contingent creditors, presumably on the basis of the challenges currently before the Court. No arrangements have been made to pay them. Ms Sadie, advocate for the defendants, does not dispute that the plaintiffs appear to be in financial difficulties. However, she does not necessarily accept the extent of those difficulties or that they should prevent payment into court. The defendants are understandably concerned that any delay in the challenges being pursued puts at risk their ability to recover funds if they successfully defend them.

[24] This is a factor that counts against the granting of a stay without conditions.

*Were the challenges brought for good reasons, and are they being pursued in good faith?*

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

[26] The defendants have raised concerns about the plaintiffs' delay in these proceedings. However, Mr Corin, who is now acting for both himself and Longevity, has explained his struggle to manage the proceedings along with his business affairs. He has apologised to the Court and has committed to giving the proceedings his full attention in the future.

[27] Mr Corin has strongly held views about the error of the Authority's findings. He has been critical of the way in which his and Longevity's cases were defended in the Authority. Ms Sadie suggests that this indicates a lack of credibility and/or an absence of good faith. However, it is not unusual in de novo challenges for the focus of the case to be different from that in the Authority. I do not consider that this is an indication of a lack of good faith. Any issues of credibility will be able to be pursued at the time of any hearing.

[28] This is a neutral factor.

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

[29] A stay will delay the defendants from receiving the fruits of their success in the Authority. However, they have proposed that the funds be paid into court, and accordingly are not intending to retain use of them in the immediate term.

[30] They say that if a stay is granted without conditions, there is a risk of dissipation of assets by the company and that, in that instance, they would be injuriously affected. Given the evidence filed by Mr Corin, I agree that this is a concern. It is a factor that counts against the granting of a stay without conditions.

*Impact on third parties, novel or important issues, and public interest*

[31] There is no suggestion that there are any issues in respect of impact on third-party interests, that the challenges would raise any novel or important issues, or that any issues of public interest arise.

*Are the merits of the plaintiffs' challenges clear enough to be relevant?*

[32] 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>12</sup> That observation is true of the present challenges which have not yet been heard. Both parties have made comments in relation to the other's case. However, as noted above, these are matters that would need to be teased out in evidence and tested under cross-examination. It is not appropriate or possible to comment on the merits at this stage.

*Balance of convenience/interests of justice*

[33] Turning to consider the balance of convenience, there are factors that go both ways. The defendants succeeded in the Authority and have the right to the fruits of their success in that forum. The plaintiffs have a statutory right to challenge the Authority's determinations. They have raised concerns about their ability to make payments into court, which they say the Authority should never have ordered. However, it seems from the evidence provided by Mr Corin that arrangements have been able to be reached with other creditors and Longevity is continuing to trade at this point.

[34] In those circumstances, the balance of convenience and the interests of justice favour the solution identified by the defendants, namely a payment into court pending the outcome of the challenges.

### **Stay of proceedings and applications to strike out**

[35] As noted above, the defendants apply to strike out or, in the alternative, stay the proceedings with conditions. The plaintiffs oppose the applications.

[36] Rule 15.1 of the High Court Rules 2016 sets out the situations where the Court may strike out proceedings. It applies to this Court via reg 6 of the Employment Court Regulations 2000.<sup>13</sup> It provides:<sup>14</sup>

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<sup>12</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].

<sup>13</sup> Employment Court Regulations 2000, reg 6.

<sup>14</sup> High Court Rules 2016, r 15.1.

### **15.1 Dismissing or staying all or part of proceeding**

- (1) The court may strike out all or part of a pleading if it—
  - (a) discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or
  - (b) is likely to cause prejudice or delay; or
  - (c) is frivolous or vexatious; or
  - (d) is otherwise an abuse of the process of the court.

[37] The principles applying to an application to strike out are well settled.<sup>15</sup> The pleaded allegations of facts, whether admitted or not, are assumed to be true. The jurisdiction to strike out a pleading on the ground that it discloses no reasonably arguable cause of action is to be exercised sparingly, and only in clearly untenable cases.<sup>16</sup> The applicant must meet a high threshold to strike out prior to a substantive hearing, and special caution is required where a claim involves a developing area of the law.<sup>17</sup>

[38] The basis for both the strikeout and stay applications is the same. The defendants argue that the plaintiffs have not complied with the Authority's determinations, have not paid the amounts ordered or promptly applied for a stay of execution after indicating their intention to do so. They say the plaintiffs' challenges have caused unjust delay and hardship and risk rendering any future award nugatory. The defendants seek a dismissal of proceedings for what they categorise as non-compliance and bad faith conduct. In the alternative, they seek to stay the proceedings with conditions.

[39] Section 179 of the Act confers an absolute right to challenge determinations of the Authority, although the defendants would inevitably face hardship if the challenges were permitted without conditions, given the plaintiffs' risk of insolvency. While the delay is understandably concerning for the defendants, it has been addressed above. In any event, the delays to date are insufficient to warrant a strikeout, and there is no indication of bad faith conduct on the part of the plaintiffs.

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<sup>15</sup> *New Zealand Fire Service Commission v New Zealand Professional Firefighters' Union Inc* [2005] ERNZ 1053 (CA) at [13].

<sup>16</sup> *Attorney-General v Prince and Gardner* [1998] 1 NZLR 262 (CA) at 267.

<sup>17</sup> *Couch v Attorney-General* [2008] NZSC 45, [2008] 3 NZLR 725 at [33].

[40] Accordingly, the applications to strike out and stay the proceedings are declined. However, the terms of the orders will go toward ameliorating the prejudice to the defendants resulting from the delay and the risk that they may be unable to recover funds if they successfully defend the challenges.

### **Outcome**

[41] The plaintiffs' applications for a stay of execution are granted on the following basis:

- (a) Within 28 days of the date of this judgment, the plaintiffs are to pay into court the amounts ordered by the Authority in the defendants' favour, as set out in [4], [5] and [8] above.
- (b) The funds are to be held on interest-bearing deposit.
- (c) The plaintiffs are to pursue their challenges diligently.
- (d) If the amounts referred to in [4], [5] and [8] above are not paid into court in full within the specified timeframe, the defendants are free to enforce the Authority's determinations.

[42] The defendants' applications to strike out the proceedings, or stay the proceedings in the alternative, are declined.

[43] Both parties have had a measure of success. The defendants proposed at the outset that the funds be paid into court and the plaintiffs have successfully defended the strikeout applications. Accordingly, costs will lie where they fall.

[44] The registry is directed to arrange a directions conference in the new year to discuss next steps in this proceeding.

Kathryn Beck  
Judge

Judgment signed at 11 am on 5 December 2025