

[3] In its determination dated 10 March 2023, the Authority ordered the company to pay the first defendant, Nathan Corrigan, the following: \$5,885 (gross) in lost remuneration, KiwiSaver and holiday pay on the lost remuneration, \$20,000 in compensation, and \$500 as a penalty.¹ Subsequently, the Court ordered the company to pay Mr Corrigan an additional sum of \$6,071.56 in costs.²

[4] However, the company was in liquidation and has now been deregistered. It did not pay the sums ordered by the Authority. Therefore, Mr Corrigan sought compliance orders against it. At the same time, he applied for a compliance order against Mr Menzies, with the goal of requiring him to take steps to ensure the company could make payment of the amounts due to Mr Corrigan.

[5] Ultimately, on 26 July 2024, the Authority ordered Mr Menzies to take necessary steps, within 21 days, to ensure that the company received the sums it owed to Mr Corrigan, along with interest. A compliance order was also made against the company to pay the Authority's awards, or such lesser amount according to priorities set by law.³ On 17 September 2024, the Authority ordered Mr Menzies to pay Mr Corrigan the sum of \$4,571.55 as a contribution to his costs.⁴

[6] The plaintiff has filed a de novo challenge to the Authority's 26 July 2024 and 17 September 2024 determinations and also seeks a stay of those determinations.

Legal framework

[7] 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 The challenging party must satisfy the

¹ *Corrigan v Prime Focus Security Ltd (in liq)* [2023] NZERA 125 at [78].

² *Corrigan v Prime Focus Security Ltd (in liq)* [2023] NZERA 253 at [23].

³ *Corrigan v Prime Focus Security Ltd (in liq)* [2024] NZERA 448 at [62].

⁴ *Corrigan v Prime Focus Security Ltd (in liq)* [2024] NZERA 556 at [14].

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.⁸ 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.⁹

[8] 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:¹⁰

- (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.

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

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

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

¹⁰ *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).

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

Affidavits and submissions have been filed

[10] Mr Menzies' advocate, Mr Anderson, submitted that if Mr Menzies paid money into the company, that money would not be paid to Mr Corrigan. He submitted it would likely be paid to other creditors who have priority, including the Inland Revenue Department. In such circumstances, payment could render Mr Menzies' challenge ineffectual because there would be no way of recovering the money from those other creditors in the event of the challenge being successful. In relation to the costs order, it was submitted that Mr Corrigan's financial circumstances would prevent him from repaying any money paid to him.

[11] Mr Anderson also submitted that the merits of this case are sufficiently clear as to be treated as a critical factor. He says that the Authority was not permitted to make the orders it made against Mr Menzies, that it incorrectly investigated the company's affairs prior to its liquidation, and that there was a serious breach of natural justice because Mr Menzies was not heard in relation to the substantive proceedings.

[12] Further, Mr Anderson submitted that the challenge is brought for good reasons and in good faith and that Mr Corrigan and third parties would not be injuriously affected by a stay. He also submitted that there is public interest in these proceedings as the Court will need to address the extent of director and shareholder liabilities within the Court's compliance jurisdiction.

[13] Mr Corrigan is no longer represented and did not file submissions; however, his former representative filed a detailed notice of opposition to the stay application on his behalf. It was submitted that the challenge will not be rendered ineffectual without a stay and that Mr Menzies' position on the point is speculative. It was also submitted that the challenge was not brought in good faith and that Mr Menzies is simply seeking to avoid complying with the Authority's determination.

[14] It was submitted for Mr Corrigan that he will be injuriously affected by a stay as it will make it more difficult for him to recover the sums owed to him by the company. It was also noted that Mr Corrigan is in debt to a family member on account of his legal costs in these proceedings; it was submitted that the family member would

suffer detriment if a stay was ordered. Further, it was submitted that Mr Menzies appears to have no intention of complying with the compliance order so that it is disingenuous for him to suggest that he will be injuriously affected if no stay is granted.

[15] In terms of the legal issues arising, it was submitted that Mr Menzies' challenge is weak and that there are no novel or important issues arising. It was emphasised that the Authority did not make Mr Menzies personally liable for the company's liabilities; it only required him to ensure the company received the awards made in Mr Corrigan's favour due to his alleged conduct in siphoning funds and setting up phoenix corporations. Further, it was submitted that there is public interest in deterring employers who inappropriately use liquidation processes as a means of evading legal liability for breaches of employment law.

Analysis

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

[16] I accept that Mr Menzies' challenge may be rendered ineffectual if a stay is not granted over the compliance order made against him, although payment of the money into Court, as opposed to into the company, would mitigate that concern.

[17] However, that is not the case with the costs order made against Mr Menzies. Mr Corrigan has stated in an affidavit that if Mr Menzies is successful, he will be able to repay that money to him. The award of costs is not large in comparison to the other sums at issue in these proceedings, being only \$4,571.55. Thus, I accept Mr Corrigan's evidence that he will be in a position to repay the money.

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

[18] The issues in this proceeding are complex. The submissions for Mr Corrigan suggested that Mr Menzies was not acting in good faith because he was attempting to avoid liability by misusing corporate arrangements to avoid employment obligations. Mr Menzies' position is that he is not liable and cannot be made liable, either directly or indirectly, for the company's liabilities. Although I accept that there is something

distasteful about a sole director and shareholder of a company refusing to satisfy their company's obligations, the position adopted by Mr Menzies is not inconsistent with him pursuing his claim in good faith. Therefore, I accept that his challenge has been brought for good reasons and is being pursued in good faith.

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

[19] In light of the company's financial situation and the unknown state of its financial obligations, there is a real risk that, even if Mr Menzies complies with the Authority's compliance order, Mr Corrigan will not receive the relevant money. However, a stay with terms requiring payment into Court will preserve both parties' positions. In relation to costs, I consider the situation is slightly different. I accept that a stay over the costs award would have an injurious impact on Mr Corrigan, particularly given his tight financial circumstances.

Will the stay have an impact on third parties?

[20] As Mr Corrigan has borrowed money from a family member to pursue these proceedings, I accept that there is a risk that if the costs award is not paid, the family member will be injuriously impacted, given Mr Corrigan's financial circumstances.

Are there any novel or important issues, and is there any public interest?

[21] I accept that there is some public interest in these proceedings in that they balance the rights and obligations of company directors and shareholders with the rights of employees to recover wages. Amendments to the Employment Relations Act 2000 (the Act) in 2016 made it easier for employees to recover funds from company directors where those directors were involved in breaches of minimum entitlement provisions. I consider that the degree to which s 137(2) of the Act can be used to achieve a similar effect is an important issue which has not been considered closely by the Court.

[22] However, although the issues are important and of public interest, I do not consider that assists either party. That is because there are two important principles at play. The first principle is that a company is a legal entity in its own right. The second

principle is that a company should not be used as a mechanism to avoid employment obligations. Mr Menzies emphasises the first principle, and Mr Corrigan emphasises the second. The role of the Court in this case will be to address how s 137(2) of the Act engages with those principles.

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

[23] It is generally difficult to assess the merits of a challenge at an interlocutory stage, particularly where a de novo challenge has been filed.¹² Mr Anderson submits that the merits of Mr Menzies' case are sufficiently clear to warrant a finding to that effect. However, I do not accept that to be the case. As noted elsewhere in this judgment, there are complex factual and legal issues arising in this case that do not appear to be straightforward. A close review of the issues will be required.

Balance of convenience and interests of justice

[24] Turning to consider the balance of convenience, I consider that a stay of the Authority's compliance order, with conditions, is in the interests of both parties.

[25] I consider that a stay should be granted on the condition that the money is paid into Court. That is because the challenging party can be expected to put their best foot forward by paying money into Court pending the challenge being resolved. I also take note of the fact that Mr Corrigan was successful in the Authority and has had considerable difficulties in having the Authority's awards enforced. Even if he is successful in defending this challenge, it is by no means clear that his difficulties on that front will be resolved. Having the money paid into Court will help ensure that his position is preserved so that, in the event of being successful, he will not be required to bring enforcement proceedings against Mr Menzies as well as the company.

[26] On the other hand, I do not consider that there is any basis for a stay of execution of the Authority's costs award in Mr Corrigan's favour. That sum remains

¹² 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].

payable, and I consider that it is in the interests of justice for the stay of the compliance order to be made conditional on the costs award being paid to Mr Corrigan.

Outcome

[27] Insofar as it relates to the Authority's costs award dated 17 September 2024, the application for a stay is declined. That costs award remains payable, and Mr Corrigan is free to continue to enforce it.

[28] The application for a stay of the Authority's compliance order dated 26 July 2024 is granted on two conditions:

- (a) Mr Menzies is to pay the sum of \$33,103.91¹³ into the Employment Court registry, to be held in an interest-bearing account, within 21 days of the date of this judgment.
- (b) Mr Menzies is to pay the sum of \$4,571.55, being the Authority's costs award dated 17 September 2024, to Mr Corrigan within 21 days of the date of this judgment.

[29] The stay will lapse if those conditions are not met within the stated timeframes.

[30] Mr Corrigan is entitled to costs, and the parties are encouraged to agree. However, if the parties are unable to agree on the issue, Mr Corrigan will have 14 days from the date of this judgment within which to file and serve any memorandum and supporting material, with Mr Menzies having a further 14 days within which to respond. Any reply should be filed within a further seven days.

Addendum

[31] Material filed in these proceedings indicates that Mr Anderson has engaged in an unprofessional and abusive manner towards Mr Corrigan's former counsel. Mr Anderson has previously been warned that such conduct is not tolerated by the Court.¹⁴

¹³ The sums awarded to Mr Corrigan along with a nominal increase of approximately 11 per cent on the lost remuneration to factor in the KiwiSaver and holiday pay components of the award.

¹⁴ *Joyce v Ultimate Siteworks Ltd* [2024] NZEmpC 204 at [11]–[28].

I repeat those warnings and strongly recommend that Mr Anderson obtain mentoring support if he has not already done so.

Kathryn Beck
Judge

Judgment signed at 12.30 pm on 19 February 2025