

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

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

**[2024] NZEmpC 134  
EMPC 193/2024**

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

AND IN THE MATTER OF an application for security for costs

BETWEEN XENIA GROUP LIMITED  
Plaintiff

AND JACKSON GEORGE  
Defendant

Hearing: On the papers

Appearances: B Molloy and O Rose, counsel for plaintiff  
D Fleming, counsel for defendant

Judgment: 24 July 2024

---

**CONSENT INTERLOCUTORY JUDGMENT (NO 3)  
OF CHIEF JUDGE CHRISTINA INGLIS  
(Application for variation of a stay of execution order)  
(Application for security for costs)**

---

[1] I issued a judgment by consent on 8 July 2024 staying the execution of two determinations of the Employment Relations Authority in this matter.<sup>1</sup> A subsequent variation of the stay of execution order was granted, by consent, on 17 July 2024.<sup>2</sup> The stay was made on conditions, one of which was that the plaintiff was to pay to the

---

<sup>1</sup> *Xenia Group Ltd v George* [2024] NZEmpC 124; *George v Xenia Group Ltd* [2024] NZERA 350; *George v Xenia Group Ltd* [2024] NZERA 266.

<sup>2</sup> *Xenia Group Ltd v George (No 2)* [2024] NZEmpC 128.

Registrar of the Employment Court the sum of \$40,823.92 no later than 19 July 2024. If payment was not made within that timeframe, the stay was to lapse and the amounts ordered were to become immediately enforceable. The amounts ordered were not paid within time and accordingly the stay lapsed.

[2] The parties now seek a further variation to the orders made by the Court, extending the earlier timeframe for payment to no later than 26 July 2024. An additional order is sought that the plaintiff pay into Court security for costs in the amount of \$12,000. The basis on which security for costs is sought is set out in the joint memorandum of counsel, and centres on the plaintiff's current inability to comply with the Court's previous interlocutory orders, giving rise to reasonable grounds for believing that it will be unable to meet any costs order subsequently made against it on its challenge.

[3] I am satisfied that it is appropriate to vary the earlier orders contained in my judgment of 17 July 2024, as sought by the parties. The following orders are accordingly made:

- (a) The plaintiff is to pay to the Registrar of the Employment Court, no later than 26 July 2024, the agreed sum of \$40,823.92, which is to be held on an interest-bearing account.
- (b) If the plaintiff does not make payment of the agreed sum by the agreed date (namely 26 July 2024), the stay will lapse and the amounts ordered against the plaintiff will become immediately enforceable.
- (c) The monies are not to be paid out until further order of the Court.

[4] It is well established that the Court may order security for costs in appropriate circumstances, including where there are reasonable concerns about a plaintiff's ability to pay.<sup>3</sup> I am satisfied that it is appropriate to make an order for security for costs as sought by the parties.

---

<sup>3</sup> *Koia v Attorney-General* [2004] 1 ERNZ 116 (EmpC) at [17]. See also Employment Court Regulations 2000, reg 6(2)(a)(ii); High Court Rules 2016, r 5.45.

[5] Accordingly, the plaintiff is ordered to pay into Court security for costs in the amount of \$12,000 on the following conditions:

- (a) The security amount will be paid into Court on or before 17 September 2024.
- (b) The security amount will be held on an interest-bearing account and is to be held pending further order of the Court.
- (c) If payment of the security amount has not been made on or before 17 September 2024 the plaintiff's challenge will be stayed until such time as the security has been paid or until such time as the plaintiff's challenge is struck out for want of prosecution on application by the defendant.

[6] Costs are reserved.

Christina Inglis  
Chief Judge

Judgment signed at 3.00 pm on 24 July 2024