

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

**I TE KŌTI TAKE MAHI O AOTEAROA  
ŌTAUTAHI**

**[2025] NZEmpC 60  
EMPC 363/2021**

IN THE MATTER OF a declaration under s 6(5) of the  
Employment Relations Act 2000

AND IN THE MATTER OF an application for judicial review

AND IN THE MATTER OF an application for a stay of proceedings

BETWEEN HOSEA COURAGE, DANIEL  
PILGRIM AND LEVI COURAGE  
Plaintiffs

AND THE ATTORNEY-GENERAL SUED  
ON BEHALF OF THE MINISTRY OF  
BUSINESS, INNOVATION AND  
EMPLOYMENT, LABOUR  
INSPECTORATE  
First Defendant

AND HOWARD TEMPLE, FERVENT  
STEDFAST, ENOCH UPRIGHT,  
SAMUEL VALOR, FAITHFUL  
PILGRIM, NOAH HOPEFUL AND  
STEPHEN STANDFAST  
Second Defendants

AND FOREST GOLD HONEY LIMITED  
AND HARVEST HONEY LIMITED  
Third Defendants

AND APETIZA LIMITED  
Fourth Defendant

**EMPC 85/2022**

IN THE MATTER OF a declaration under s 6(5) of the  
Employment Relations Act 2000

AND IN THE MATTER OF an application for judicial review

AND IN THE MATTER OF an application for a stay of proceedings

BETWEEN

SERENITY PILGRIM, ANNA  
COURAGE, ROSE STANDTRUE,  
CRYSTAL LOYAL, PEARL VALOR  
AND VIRGINIA COURAGE  
Plaintiffs

AND

THE ATTORNEY-GENERAL SUED  
ON BEHALF OF THE MINISTRY OF  
BUSINESS, INNOVATION AND  
EMPLOYMENT, LABOUR  
INSPECTORATE  
First Defendant

AND

HOWARD TEMPLE, SAMUEL  
VALOR, FAITHFUL PILGRIM, NOAH  
HOPEFUL AND STEPHEN  
STANDBAST  
Second Defendants

Hearing: On the papers

Appearances: B Henry, counsel for plaintiffs  
A Boadita-Cormican, A Wicks and N El Sanjak, counsel for first  
defendant  
C Pearce, counsel for second to fourth defendants

Judgment: 1 April 2025

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**INTERLOCUTORY JUDGMENT (NO 17) FOR EMPC 363/2021 AND  
(NO 38) FOR EMPC 85/2022 OF CHIEF JUDGE CHRISTINA INGLIS  
(Application for a stay of proceedings)**

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## **Introduction**

[1] The Attorney-General seeks two orders of stay. The first is a stay of proceedings pending the outcome of a proposed appeal to the Court of Appeal against the Court's judgment dated 12 December 2024.<sup>1</sup> Secondly, the Attorney-General seeks a stay of the timeframe for filing a statement of defence, pending the outcome

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<sup>1</sup> *Courage v Attorney-General* [2024] NZEmpC 247.

of the application for a stay, and an extension of time if the application for stay is declined.

[2] The judgment which the Attorney-General seeks leave to appeal related to the Court's decision on a strike out application. The Court found that the plaintiffs could not pursue a claim of breach of statutory duty in the Employment Court but could seek judicial review. The Court allowed the plaintiffs time to replead their claim, and ordered that if they did not do so by a certain date their claim would be struck out. The plaintiffs did replead and filed an amended statement of claim on 26 February 2025.

[3] The plaintiffs oppose the application; the other defendants do not oppose the application and abide the decision of the Court.

### **Legal framework**

[4] 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>2</sup>

- (a) whether the appeal (if leave is granted) will be rendered ineffectual if a stay is not ordered;
- (b) whether the application for leave to appeal is brought for good reasons and is 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;

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<sup>2</sup> *Cronin-Lampe v Minister of Education* [2024] NZEmpC 213 at [30]; *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50 at [5]; and *Dymocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* (1999) 13 PRNZ 48 (CA).

- (e) the novelty and/or importance of the questions involved;
- (f) the public interest in the proceeding; and
- (g) the overall balance of convenience.

[5] Other factors, including the likely merits of the proposed appeal, can also be relevant.<sup>3</sup> Ultimately, the overarching consideration is the interests of justice.

### **Analysis**

[6] The key point advanced by the Attorney-General is focused on the prejudice that will be suffered if no stay is granted. Other points are also raised, which I will come to.

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

[7] The Attorney-General's application for leave to appeal is directed at the claim as originally pleaded (breach of statutory duty); not the claim as it now stands (application for judicial review). I agree with counsel for the plaintiffs, Mr Henry, that the application for leave to appeal is untethered from the application for judicial review. Accordingly the outcome of any appeal will have no legal consequence for the plaintiffs' claim. In those circumstances it would, in my view, be inappropriate to order a stay. It would simply serve to delay the proceeding, a point the plaintiffs make. The same issue (no legal consequence) may not arise in respect of the High Court proceeding (which is running in parallel), but that is something for the parties to pursue if they wish to do so.

[8] In other words, the Attorney-General's appeal against the Court's decision on the strike out will not be rendered nugatory if no stay is granted; it is the amendment to the plaintiffs' claim which may be said to have had that effect. It is clear that the plaintiffs are entitled to proceed with an application for judicial review against the Labour Inspector, and it is also clear that such actions fall within the exclusive

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<sup>3</sup> *Broadspectrum (NZ) Ltd v Nathan* [2017] NZCA 434, [2017] ERNZ 733 at [34].

jurisdiction of this Court.<sup>4</sup> I did not understand either party to disagree with that. While I accept that the proposed appeal may raise important issues which would benefit from consideration by the Court of Appeal, that is a different matter from the impact any findings will have on the plaintiffs' claim as currently pleaded.

[9] The high-water mark of the Attorney-General's submission is that the plaintiffs might choose not to pursue an application for judicial review if the Court of Appeal rejects the Employment Court's "sequential approach", as it would mean that the plaintiffs could directly pursue a breach of statutory duty claim in the High Court. Alternatively, the Court of Appeal may find that the Employment Court has jurisdiction for breach of statutory duty, which might also render an application for judicial review unnecessary.

[10] The problem with this submission is that the plaintiffs are entitled to seek judicial review; it is not for the Attorney-General to elect how the plaintiffs should conduct their case. The plaintiffs have made it clear that they wish to pursue an application for judicial review, and they are strongly opposed to a stay.

[11] For these reasons I would decline the application for a stay. I see a stay as serving no useful purpose in the particular circumstances. However, for completeness I turn to consider the other factors generally considered on an application for a stay.

*Is the application for leave to appeal brought for good reasons, and is it being pursued in good faith?*

[12] The plaintiffs submit that the application for leave to appeal is a mechanism to further delay the hearing of their claims.

[13] Any delay is regrettable, particularly in the context of these proceedings, given the circumstances of those said to have been impacted by the impugned decisions of the Labour Inspector. However, the Attorney-General is entitled to exercise her right to seek to appeal against the Court's decision. I cannot conclude, based on the material currently before the Court, that the application for leave to appeal is being used as a

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<sup>4</sup> Employment Relations Act 2000, s 194.

strategic device to cause unnecessary delay, or is otherwise not being pursued in good faith. In the circumstances the point is neutral.

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

[14] Counsel for the Attorney-General submits that it is relevant that the plaintiffs' claim was originally one of breach of statutory duty and that judicial review was only considered once the judgment was delivered. Depending on the outcome of the appellate process, the breach of statutory duty claim can proceed without the need for a judicial review, either in the High Court or the Employment Court. In this sense it is said that the plaintiffs will not be injuriously affected by a stay. I have already dealt with this point. If a stay is granted, the plaintiffs' application for judicial review against the Labour Inspector, which they now wish to pursue and which they are entitled to pursue, will be delayed until the outcome of the appellate process. This weighs against the grant of leave.

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

[15] The Attorney-General submits that there will be no effect on third parties. Counsel points out that the judicial review challenges the Labour Inspectorate decisions in 2017 and 2021 that the Gloriavale residents were not employees, which in many ways would be a replication of the findings that the Employment Court has already made, namely that the plaintiffs were employees.<sup>5</sup> Further, the application for judicial review seeks a declaration in relation to Gloriavale residents that are not plaintiffs in these proceedings. As counsel notes, it is not clear that jurisdiction exists for making such a declaration without the individuals in question consenting to it.<sup>6</sup>

[16] While I accept that some of the declarations sought (if granted) may have at least a symbolic effect on other residents of Gloriavale, those are not the sort of interests which usually weigh in favour of the grant of leave.

[17] Overall the factor is neutral.

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<sup>5</sup> *Courage v Attorney-General* [2022] NZEmpC 77, (2022) 18 NZELR 746; *Pilgrim v Attorney-General* [2023] NZEmpC 105, [2023] ERNZ 454.

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

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

[18] It is submitted that the issue on the proposed appeal is novel (as it relates to what was referred to as the sequential approach) and important, as it engages the boundary line between the exclusive jurisdiction of the Employment Court and the jurisdiction of the High Court.

[19] In order to assess the importance or otherwise of the proposed appeal it is necessary to return to what this case is about at this stage (and what it is not now about).

[20] The application for leave to appeal is against a decision on a strike out application, in which the Court granted a period of time to the plaintiffs to replead their claim and directed that, if they did not replead within that time, their claim would be struck out. The judgment noted that, if the claim was struck out, the plaintiffs could simply refile an application for judicial review. It was said that allowing time to replead was an efficient and practical way to proceed. In the event, the plaintiffs did replead their claim. The claim as now formulated is an application for judicial review, which the parties do not contest is within the exclusive jurisdiction of this Court. It may well be that issues will arise as to the pleadings, amongst other things, but such matters are not unusual and can be worked through in the ordinary way.

[21] Finally, it seems to me to be much more likely that the sequencing issues which the Attorney-General wishes the Court of Appeal to address will arise more acutely in the High Court proceedings. As I have said, it is open to one of the parties to apply for a stay in that jurisdiction if that is considered appropriate.

[22] I am not satisfied that in the particular circumstances this factor weighs in favour of a stay in this Court.

*Are the merits of the proposed appeal clear enough to be relevant?*

[23] It will be apparent that I do not regard the merits of the proposed appeal as relevant to the application for a stay.

*Balance of convenience and interests of justice*

[24] It is submitted that if no stay is granted the Attorney-General will be put to the cost of defending a judicial review claim that may turn out to be unnecessary. I have already dealt with this point.

[25] If a stay is granted, determination of the plaintiffs' application for judicial review would inevitably be delayed, perhaps by a considerable period of time. It is desirable that such applications be dealt with promptly.<sup>7</sup> And there is a strong public interest in the Court supervising the exercise of powers conferred on statutory office holders such as the Labour Inspector, and for them to be held accountable if they do not act in accordance with them (as the plaintiffs allege).

[26] The balance of convenience weighs against a stay.

[27] The overall interests of justice follow the balance of convenience.

**Conclusion**

[28] The application for a stay pending the outcome of the appellate process is declined.

[29] Any statement of defence to the plaintiffs' amended statement of claim is to be filed and served no later than 4 pm, Friday 18 April 2025.

[30] The plaintiffs are entitled to costs, the quantum of which is reserved.

Christina Inglis  
Chief Judge

Judgment signed at 11.00 am on 1 April 2025

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<sup>7</sup> See, for example, *New Zealand Institute of Chartered Accountants v Chartered Institute of Management Accountants* [2015] NZHC 818 at [83].