

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

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

**[2026] NZEmpC 10
EMPC 595/2025**

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

BETWEEN FRAMES DIRECT NZ LIMITED
 Plaintiff

AND YAN ZHANG
 Defendant

Hearing: 27 January 2026
 (Heard at Wellington by telephone)

Appearances: T Li, agent for plaintiff
 D Kim, advocate for defendant

Judgment: 27 January 2026

**INTERLOCUTORY JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS
(Application for a stay of execution)**

Introduction

[1] The plaintiff company has applied for a stay of execution of orders made against it by the Employment Relations Authority (the Authority).¹ In its determination dated 25 November 2025, the Authority ordered the plaintiff to pay the defendant:

¹ *Zhang v Frames Direct NZ Ltd* [2025] NZERA 757.

- (a) \$12,000 compensation;
- (b) \$15,147 (gross) in lost remuneration;
- (c) \$551.48 (gross) public holiday pay;
- (d) \$882.36 (gross) holiday pay; and
- (e) interest.

[2] The Authority also ordered penalties in the sum of \$2,000, half of which was to be paid to the Crown and half to the defendant.

[3] The plaintiff company has filed a challenge to the Authority's determination and seeks a stay of execution pending the outcome of the challenge. The application is opposed. Documentation was filed by both parties in advance of a telephone hearing this morning. I have had regard to that documentation and to the submissions advanced at the hearing.

Legal framework

[4] A challenge does not operate as a stay.² That reflects the principle that a successful litigant is ordinarily entitled to the fruits of their success.³ There are, however, circumstances in which a stay is appropriate.⁴ The challenging party must satisfy the Court that adequate grounds have been made out.⁵ Any orders made must be the least necessary to preserve the position of the challenging party. 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:

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

² Employment Relations Act 2000, s 180.

³ *Duncan v Osborne Building Ltd* (1992) 6 PRNZ 85 (CA), at 87.

⁴ Employment Court Regulations 2000, reg 64.

⁵ *Grove v Archibald* [1998] 2 ERNZ 125 (EmpC), at 128-129.

- (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.

[5] Other factors, including the likely merits of any related challenge and whether the applicant has made any concession as to the existence of the orders made against it by the Authority, can also be relevant.⁶ Ultimately, the overarching consideration is the interests of justice.

Analysis

[6] The company's application is primarily focussed on what it says are the merits of its challenge. It also focuses on the financial impact on it absent a stay and perceived difficulties in enforcement if the moneys ordered by the Authority were paid to the defendant but subsequently had to be recovered. As I have said, the defendant opposes the application, for reasons which I touch on below.

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

[7] There is no evidence before the Court, such as financial records, to support the assertion that declining a stay would cause significant financial and operational

⁶ *Bathurst Resources Ltd v L&M Coal Holdings Ltd* [2020] NZCA 186, at [19]. The Court observed that concessionary steps were expected of an applicant for a stay of a money order, particularly when the order had been sustained on an appeal (in that case the orders of the High Court had been upheld by the Court of Appeal and the stay was sought pending the outcome of an appeal to the Supreme Court).

hardship to the business. Indeed, the defendant refers to a private offer made by the plaintiff to pay the full amount into Court, suggesting that it does have financial resources available to it.

[8] While I am prepared to accept that the company is facing some difficulty at present, I am not satisfied that it will be unable to proceed with its challenge if no stay is granted. This factor is accordingly neutral.

[9] The plaintiff has raised concerns about the defendant's ability to re-pay the sums ordered in his favour if the plaintiff's challenge succeeds; if the money is dissipated and cannot be recovered the plaintiff's challenge rights will be rendered nugatory. The defendant has adequately addressed these concerns in his affidavit evidence, and they can be put to one side.

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

[10] I accept, for present purposes, that the challenge is brought in good faith; the defendant accepts this point.

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

[11] If a stay is granted, the defendant, who was successful in the Authority, will be denied access to the sums awarded in his favour, and for a period of time which is uncertain. This factor weighs against a stay.

Will the stay have an impact on third parties?

[12] There is no suggestion that a stay would impact any third party; nor is there anything to suggest that declining to stay on enforcement would impact on any third party. Both parties accept this point. This factor is neutral.

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

[13] There are no novel or important issues raised by these proceedings. They centre on the existence of an employment relationship. No issues of broader public interest arise. Both parties accept this point. This factor is neutral.

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

[14] The plaintiff submits that the merits weigh strongly in its favour, including because a number of credibility issues arise which are likely to be determined in its favour once the challenge is heard.

[15] As is well accepted, it is generally difficult to assess the merits of a challenge at an interlocutory stage, particularly where (as here) a de novo challenge has been filed.⁷

[16] It is apparent from the Authority's determination and the pleadings that many facts are in dispute, which will need to be resolved on the evidence that is before the Court. And while, as the plaintiff says, the Court may be required to resolve issues of credibility as between the witnesses, it is not possible to assess the likely merits of the challenge with any degree of confidence at this early stage and before the evidence is tested. This factor is neutral.

Concession

[17] It is notable that the defendant has gone on the front foot and suggested that the plaintiff pay half of the sums ordered against it into Court pending the outcome of the challenge; the other half to him. That would have gone some way to protecting the defendant's interests, in the event that the challenge fails. The plaintiff refused on the basis that it does not have the financial resources to make a payment into Court as a condition of a stay, a position that can be contrasted with the private offer referred to by the defendant.

⁷ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801, at [36].

[18] If the position is as the plaintiff says, then it reinforces the potential prejudice that the defendant faces if a stay of execution is granted, and weighs against a stay.

Balance of convenience and interests of justice

[19] The balance of convenience weighs against a stay being granted and the overall interests of justice follow the balance of convenience.

Outcome

[20] The application for a stay of execution is declined.

[21] The defendant is free to take steps to enforce the Authority's orders.

[22] The defendant is entitled to costs, the quantum of which is reserved.

Christina Inglis
Chief Judge

Judgment signed at 1.30 pm on 27 January 2026