

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

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

**[2026] NZEmpC 15
EMPC 436/2024**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for security for costs
BETWEEN	ISHER ENTERPRISES LIMITED First Plaintiff
AND	KULVINDER SINGH Second Plaintiff
AND	LIONMEAD CAPITAL GROUP LIMITED Third Plaintiff
AND	ARUSHI ARUSHI Defendant

Hearing: On the papers

Appearances: K Singh, second plaintiff in person, and as agent for first and third
plaintiffs
B Edwards, counsel for defendant

Judgment: 2 February 2026

**INTERLOCUTORY JUDGMENT (NO 2) OF JUDGE KATHRYN BECK
(Application for security for costs)**

[1] This judgment resolves an application by the defendant for an order that the plaintiffs pay security for costs.

[2] These proceedings were originally scheduled for a two-week hearing commencing 10 November 2025. However, on 28 October 2025, Mr Singh, on behalf

of the plaintiffs, filed an application for an adjournment of the hearing, together with a supporting affidavit. The plaintiffs say they were unable to obtain counsel for the hearing and were in the process of applying for legal aid.

[3] On 31 October 2025, I issued a minute adjourning the substantive hearing; however, I ordered that the application for security for costs was to be heard in person on 10 November 2025.

[4] Previously, the plaintiffs had sought a stay of execution of orders made against them by the Employment Relations Authority.¹ I granted a stay of execution on the condition that sums would be paid to the defendant and into Court. If such sums were not paid within the timeframes set out, the defendant would be free to enforce the Authority's determinations.² The plaintiffs did not pay the sums set out in that judgment and the defendant has since commenced enforcement of the Authority's determination.

Legal framework

[5] As there is no provision in the Employment Relations Act 2000 to order security for costs, the Court has looked to the High Court Rules 2016.³ Rule 5.45 provides a discretion to order security for costs if a plaintiff is a resident outside New Zealand or there is reason to believe that the plaintiff would be unable to pay the costs of the defendant if the plaintiff is unsuccessful in their proceeding.

[6] In exercising this discretion, the Court must consider all the circumstances and balance the interests of both the plaintiff and the defendant.⁴ An order may be made if it is just in all the circumstances.⁵

[7] The power to award security for costs has been the subject of judicial comment in this Court, although the issue has not yet arisen for determination and was not the subject of argument in this instance.

¹ *Isher Enterprises Ltd v Arushi* [2025] NZEmpC 128.

² At [30].

³ Employment Court Regulations 2000, reg 6(2)(a)(ii).

⁴ *McLachlan v MEL Network Ltd* (2002) 16 PRNZ 747 (CA) at [15]–[16].

⁵ High Court Rules 2016, r 5.45(2).

[8] Chief Judge Inglis recently made some observations about the scope of the Court's power to order security for costs on a standalone application.⁶ The Court's power was not the subject of argument in that case and did not need to be decided, as the application for security for costs was declined.⁷ The Chief Judge noted that the chilling effect of orders of security for costs is particularly acute in this jurisdiction, and in her view should lead to such orders being exceptional, not routine.⁸

[9] In *Watkins v Highmark Homes Ltd*, the Court of Appeal declined leave to appeal a decision of this Court ordering, among other things, security for costs.⁹ The Court of Appeal noted that the order of security for costs, and a costs order following discontinuance, were entirely orthodox and unimpeachable.¹⁰ Pending any further determination, it is appropriate at this stage to follow this orthodox approach.

Submissions

[10] There is no dispute that the plaintiffs are impecunious. That was the basis for the request for an adjournment and Mr Singh's submissions at the hearing.

[11] Mr Singh's affidavit, which provides the financial position of the first and third plaintiffs, deposes that neither company can pay any amount ordered as security for costs without risking insolvency. An affidavit filed in his personal capacity attests to similar financial circumstances.

[12] Counsel for the defendant, Mr Edwards, emphasises that Mr Singh's affidavit shows that the companies hold very limited assets which are insufficient to satisfy the Authority's orders; the companies are already in default. Mr Edwards argues that continuation of these proceedings is an irresponsible and inappropriate step as it further incumbers the companies with liabilities they cannot pay.

[13] He advises that despite efforts to enforce the Authority's orders, the plaintiffs have been unresponsive. The defendant has issued statutory demands for which the

⁶ *DSJ Joinery Ltd v Da Silva* [2025] NZEmpC 231.

⁷ At [26] and [32].

⁸ At [30].

⁹ *Watkins v Highmark Homes Ltd* [2025] NZCA 173.

¹⁰ At [13].

timeframes have expired. Mr Edwards notes that such failure constitutes an act of insolvency.

[14] Mr Singh advised that he and the other plaintiffs were seeking legal aid for this matter. The defendant accepts that if legal aid were granted, the security for costs order would not be appropriate. However, no evidence has been provided to the Court to confirm that an application for civil legal aid is in progress. Mr Singh was unable to provide any details in answer to questions from the Court. He was asked to keep the Court updated as to the progress of any application. No further information has been received. I also observe that the first and third plaintiffs, as companies, would not be eligible to obtain legal aid.

[15] Following the hearing, the defendant filed a memorandum attaching documentation which indicates that Mr Singh has additional holdings in companies which he has not disclosed to the Court, and further suggests that he divested property into a trust during the Authority proceedings. Such material was put forward in support of a submission that the plaintiffs were conducting themselves in bad faith. However, there is insufficient evidence for such a finding and it is not necessary for the purposes of the application in any case.

[16] Regarding the substantive claim, the defendant submits that the plaintiffs' claim lacks merit and that it is inevitable that the Authority's determination will be upheld. Further, the plaintiffs' conduct, such as their repeated failure to comply with timetabling directions and the filing of lengthy or improper pleadings, has unnecessarily protracted proceedings and increased costs.

[17] The plaintiffs maintain that security for costs would effectively deny them access to justice. They submit that their claim has merit, and the Authority investigation was biased and procedurally unfair.

Analysis

[18] As noted above, the plaintiffs are impecunious. There is good reason to believe that they will be unable to pay the costs of the defendant if they are unsuccessful. The issue here then is whether it is just in all the circumstances to grant the application.

[19] Both parties feel strongly about their chances of success. However, it is not possible to determine the merits of the proceedings at this stage of a de novo challenge.¹¹ This is therefore a neutral factor in the balancing exercise.

[20] The plaintiffs' failure to comply with neither the Authority's determination nor the terms of the stay that was ordered is a factor which counts towards the granting of an order of security for costs. The defendant has been deprived of the fruits of her success for some time and the proceedings are now significantly delayed.

[21] The plaintiffs also failed to comply with this Court's timetabling orders despite extensions being granted. Unless orders were required to ensure the necessary material was before the Court for the scheduled hearing. Such conduct inevitably results in further costs for the defendant and is a factor pointing toward granting an order of security for costs.

[22] The plaintiffs' right to access to justice is to be balanced against the defendant's interest in being protected against a barren costs order.¹²

[23] Defendants are ultimately compelled to engage in the adversarial process and where a plaintiff is clearly impecunious, as in this case, there is a real risk that any future costs award will be rendered nugatory in the event the defendant is successful.

[24] When weighing the plaintiffs' right to access justice against their failure to progress these proceedings promptly, the balance of convenience favours the granting of the orders sought. It would be contrary to equity and good conscience to allow the plaintiffs to continue pursuing these proceedings, forcing the defendant to incur further

¹¹ *McLachlan v MEL Network Ltd*, above n 4, at [15] and [21].

¹² *Clear White Investments Ltd v Otis Trustee Ltd* [2016] NZHSC 2837.

costs, without confidence that such costs will be recoverable in the event she is successful.

[25] While acknowledging that any application for security for costs raises issues relating to access to justice, the circumstances of the present case justify an order granting security for costs. That situation may change if the second plaintiff is granted legal aid. That is dealt with in the orders below.

[26] Mr Edward's calculation of scale costs for these proceedings totals \$48,636.50. That is calculated on the basis that costs would be on a category 2B basis as agreed in an earlier directions conference.¹³

[27] Given the nature of the proceedings, I agree that this is an appropriate amount in the circumstances.

Outcome

[28] The application for security for costs is successful.

[29] Accordingly, the following orders are made:

- (a) By 4 pm on 27 February 2026, the plaintiffs are to pay into the Employment Court registry the amount of \$48,636.50 as security for costs, which sum is to be placed by the Registrar in an interest-bearing account until further order of the Court.
- (b) Subject to [30] below, the proceedings are stayed pending payment of the security for costs.

[30] This matter will be brought back before the Court in the event that the second plaintiff obtains legal aid. In those circumstances, he should advise the Court immediately. The registry will then organise a directions conference as soon as practicable.

¹³ Employment Court of New Zealand "Practice Directions" (1 September 2024) at No 18.

[31] Costs in respect of this application are reserved.

Kathryn Beck
Judge

Judgment signed at 3.30 pm on 2 February 2026