

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

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

**[2026] NZEmpC 5
EMPC 147/2025**

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
AND IN THE MATTER OF	an application for security for costs
BETWEEN	SOUTH POLE IP HOLDING (NZ) LIMITED Plaintiff
AND	JANICE THING Defendant

Hearing: On the papers

Appearances: R Zhao, counsel for plaintiff
M Moncur, advocate for defendant

Judgment: 21 January 2026

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

Introduction

[1] The plaintiff has applied for a stay of execution of orders made against it by the Employment Relations Authority.¹ The application relates to an order made on 7 March 2025 that the plaintiff pay the defendant the sum of \$25,000, which included

¹ *Thing v South Pole IP Holdings (NZ) Ltd* [2025] NZERA 142; *Thing v South Pole IP Holdings (NZ) Ltd* [2025] NZERA 274.

half of a \$4,000 penalty, and which was to be paid within 21 days. The second part of the application relates to the Authority's subsequent costs order (dated 16 May 2025), requiring the plaintiff to contribute \$5,500 (plus the filing fee) towards the defendant's costs. That sum was to be paid within 14 days.

[2] It appears that none of the money ordered against the plaintiff was paid to the defendant within the timeframes specified by the Authority, and nor has any payment been made to date. An application for compliance orders was filed in the Authority on 12 August 2025.

[3] On 2 April 2025, the plaintiff filed a *de novo* challenge to the Authority's substantive determination. Some five months later, on 3 September 2025, the plaintiff filed an application for a stay pending the outcome of the challenge process. The application for a stay is focussed on two factors - the perceived merits of the challenge and the plaintiff's financial position.

[4] The application for a stay is opposed by the defendant, who has filed an application for security for costs. The plaintiff opposes the defendant's application for security for costs. This judgment deals with both applications. I start with the plaintiff's stay application.

Application for stay of execution

[5] The Employment Relations Act 2000 (the Act) confirms that a challenge does not operate as a stay of proceedings on a determination of the Authority.² That reflects the principle that a successful litigant is ordinarily entitled to the fruits of their success.³ The Court may however order a stay of proceedings where a challenge against a determination of the Authority is pursued.⁴ The challenging party must satisfy the Court that adequate grounds have been made out.⁵ Any order must be the least necessary to preserve the position of the challenging party.

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.

[6] The Court of Appeal has said, in respect to commercial litigation, that when applying for a stay of execution of a monetary award a party can be expected to make some concession, such as an offer to make a payment into Court pending the outcome of the appellate process.⁶ The extent to which the Court of Appeal's observations translate to the statutory framework that applies in this Court, in particular the fact that the Act confers on parties a *de novo* right to challenge determinations of the Authority, has not been explored.

[7] In determining whether a stay ought to be granted, the Court must balance the interests of the parties and generally have regard to the following non-exhaustive list of factors:⁷ whether the challenge will be rendered ineffectual if a stay is not ordered; whether the challenge is brought for good reasons and being pursued in good faith; whether the successful party at first instance will be injuriously affected by a stay; the extent to which a stay will impact on third parties; the novelty and/or importance of the questions involved; the public interest in the proceeding; and the overall balance of convenience. Other factors, including the likely merits of any related challenge, can also be relevant. In the present case, I consider the plaintiff's delay in seeking a stay to be of particular relevance. I return to this point below.

[8] Ultimately, the overarching consideration is the interests of justice.

[9] An affidavit in support of the application has been filed by the company's director, Mr Wu. He says that the company does not have much income and currently has little or no trading activities. He says that he has been trying to raise funds to pay the defendant but that it would be "more convenient" to delay payment pending the outcome of the company's challenge; he notes that if the challenge succeeds no payment will need to be made. Mr Wu expresses the view that the defendant will not be adversely impacted if a stay is granted.

[10] The second aspect of the application is directed at the impact that the company will suffer if required to meet the orders of the Authority at this stage. In this regard,

⁶ *Bathurst Resources Ltd v L&M Coal Holdings Ltd* [2020] NZCA 186, (2020) 25 PRNZ 341, at [19].

⁷ *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50 at [5]; *Dymoocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* (1999) 13 PRNZ 48 (CA).

Mr Wu says that he has reason to believe that, if forced to pay the orders made against it, there is a real possibility that the company will be put into liquidation; if that occurs then the appeal may be rendered nugatory. Finally, Mr Wu expresses concern that, if the company succeeds on the challenge but no stay is ordered, the defendant might spend all the money awarded in her favour by the Authority and the company will be unable to recover it.

[11] One financial record is annexed as an exhibit to Mr Wu's affidavit, namely a copy of a statement that simply shows the current account balance for the company's business account for the period 12 August 2025 to 1 September 2025; the balance is \$450.53.

[12] The defendant has filed an affidavit. She confirms that she is a low-income worker and that she would be significantly prejudiced if the Authority's orders were stayed pending the outcome of the challenge. I accept that the defendant will suffer prejudice if a stay is granted. I do not accept that it can be inferred that, simply because the defendant is on a low income, she will not be in a position to repay the money in the event that the plaintiff's challenge succeeds; nor is there anything else before the Court that would support such an inference.

[13] The defendant makes the point that the plaintiff has failed to comply with the orders made against it some considerable time ago and that a stay would effectively enable it to continue to avoid its obligations to her. There is strength in that submission in the particular circumstances. In this regard, it can reasonably be inferred that the application for a stay is being advanced for ulterior purposes, namely to further delay in meeting the company's obligations under the Authority's orders. No steps appear to have been taken to meet the Authority's orders; there has been a substantial delay in applying for a stay of execution and the financial information put before the Court is incomplete, including as to what assets the company holds.

[14] Authority orders are to be complied with; it is not up to parties to decide what suits them in terms of meeting their legal obligations or, to use Mr Wu's terminology,

to unilaterally decide what is more convenient. The plaintiff's delay weighs heavily against the application.⁸

[15] The plaintiff also submits that the merits weigh in its favour. As is well accepted, it is generally difficult to assess the merits of a challenge at an interlocutory stage, particularly where a de novo challenge has been filed.⁹ This case is an example of the difficulties associated with attempting to assess the likely merits of a challenge. It is simply not possible to do so with any degree of confidence.

[16] Standing back, I conclude that the overall interests of justice follow the balance of convenience.

[17] The application for a stay is accordingly declined; the defendant is entitled to take steps to enforce the orders made in her favour by the Authority.

[18] I now turn to the defendant's application for an order of security for costs.

Security for costs

[19] The Court's power to order security for costs under the Act has long been assumed but is not without doubt, for reasons touched on recently in *DSJ Joinery Ltd v Da Silva*.¹⁰ I do not need to deal with the point in this case because of the conclusion I have reached in respect of the application.

[20] As I have explained, the orders made against the plaintiff remain enforceable in the District Court. The enforcement route is, in my view, more appropriate than effectively seeking to achieve the same result by way of an order for security for costs.¹¹

⁸ *Spring 2017 Ltd v Taifau* [2024] NZEmpC 33, at [9].

⁹ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801, at [36].

¹⁰ *DSJ Joinery Ltd v Da Silva* [2025] NZEmpC 231. See also *Hannah v Salvation Army New Zealand Trust* [2025] NZEmpC 265.

¹¹ See *Oldco PTI Ltd v Houston* EmpC Auckland AC26/08, 25 August 2008 at [29], and *Bowen v Bank of New Zealand* [2022] NZEmpC 97 at [21].

[21] Accordingly, I do not consider it to be in the broader interests of justice to order security for costs in this case; the more appropriate avenue is for the defendant to take steps to enforce the Authority's orders. The defendant's application is accordingly declined.

Conclusion

[22] The plaintiff's application for a stay of execution is declined and the defendant is free to take steps to enforce the Authority's orders.

[23] The defendant's application for security for costs is declined.

[24] In the circumstances I consider it appropriate to order that costs are to lie where they fall.

Christina Inglis
Chief Judge

Judgment signed at 11.45 am on 21 January 2026