

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA**

**[2026] NZEmpC 28
EMPC 429/2025**

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 TUNCER SAKGUN
Plaintiff

AND WHOLESALE SUSTAINABLE
WINDOWS LIMITED
First Defendant

AND REAL CONSTRUCTION LIMITED
Second Defendant

AND QUINN WRIGHT
Third Defendant

AND KIRSTY WRIGHT
Fourth Defendant

Hearing: On the papers

Appearances: T Sakgun in Person
A R Bell, counsel for defendants

Judgment: 20 February 2026

**INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN
(Application for a stay of execution; Application for security for costs)**

[1] This judgment resolves two applications currently before the Court. The first is Mr Sakgun's application for a stay of execution of the costs order made against him by the Employment Relations Authority.¹ The second is the defendants' application for security for costs.

[2] Similar considerations arise in respect of both applications.

All parties point to Mr Sakgun's financial difficulties

[3] In its costs determination, the Authority ordered Mr Sakgun to pay the first defendant \$6,250 as a contribution to its costs.

[4] Mr Sakgun has challenged the substantive determination of the Authority.² He seeks a stay on the basis that he has filed a meritorious challenge against the substantive determination. He submits that a stay of the costs order is necessary to prevent an injustice, namely that if he is required to pay the costs before the Court hears his challenge, and his challenge is ultimately successful, he will have been forced to pay a sum of money based on a finding that has been overturned. He submits it would be in the best interests of justice to stay the costs award until the Court has determined his substantive challenge.

[5] Mr Sakgun is currently unemployed and reliant on a jobseeker support benefit. He has previously been granted a waiver in respect of the filing fee on that basis.

[6] In respect of the application for security for costs, Mr Sakgun submits that his financial position would mean that if an order for security for costs is made against him, his claim would be stifled, which would amount to a denial of access to justice.

[7] For their part, the defendants say that, given Mr Sakgun's financial position, there is reason to believe he would be unable to pay their costs if he is unsuccessful.

¹ *Sakgun v Wholesale Sustainable Windows Ltd* [2025] NZERA 597.

² *Sakgun v Wholesale Sustainable Windows Ltd* [2025] NZERA 518.

The Court must balance the respective interests of the parties

[8] For present purposes, I accept that Mr Sakgun genuinely believes the Authority's substantive determination is wrong; his challenge is being pursued in good faith.

[9] Simply filing a challenge, however, does not operate as a stay of proceedings on a determination of the Authority.³ A successful litigant is ordinarily entitled to the fruits of their success.⁴ Nevertheless, there are circumstances in which a stay is appropriate, and the Court may order a stay of proceedings while a challenge is being pursued.⁵ The Court may order a stay subject to such conditions, including conditions as to the giving of security, as it thinks fit.⁶

[10] The factors that are relevant in respect of Mr Sakgun's application include:

- (a) whether his challenge will be rendered ineffectual if a stay is not ordered;
- (b) whether the defendants will be injuriously affected by a stay; and
- (c) the overall balance of convenience.

[11] In many circumstances, a stay is granted on the condition that the plaintiff pays the full amount outstanding into Court, pending the outcome of the challenge.⁷ Here, I infer Mr Sakgun will not be able to do that.

[12] Both in considering whether a stay ought to be granted, and whether security for costs ought to be ordered, the Court must balance the respective interests of the parties. Ultimately, the overarching consideration is the interests of justice.⁸

³ Employment Relations Act 2000, s 180.

⁴ *Duncan v Osborne Building Ltd* (1992) 6 PRNZ 85 (CA) at 87.

⁵ Employment Court Regulations 2000, reg 64.

⁶ Regulation 64(3)(b).

⁷ For example, see *Solid Roofing Ltd (No 2) v Newman* [2018] NZEmpC 135 at [19]; and *Van Heerden v Longevity Construction Ltd* [2025] NZEmpC 261.

⁸ *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50 at [4]–[5].

[13] On the one hand, if to pursue his challenge, Mr Sakgun has to pay the Authority's costs award and/or pay security for costs, it is likely he would not be able to proceed. On the other hand, if he pursues his challenge without paying the Authority's costs award or giving security for costs, and is unsuccessful, the defendants may be unable to recover their costs in the Authority and in the Court; there is reason to believe Mr Sakgun would not be able to meet the order of the Authority and/or any order as to costs in the Court.

[14] On balance, I consider that the interests of the parties are best met by ordering a stay of execution of the Authority's costs determination, on the condition that Mr Sakgun makes a modest payment into Court as security over the debt owing for costs in the Authority, but that no separate order is made for security for costs in the Court.

[15] Accordingly, the following orders are made:

- (a) Mr Sakgun is to pay the sum of \$4,000 into Court as security. That sum is to be paid by **4pm on 10 April 2026**. This allows Mr Sakgun time to make the necessary arrangements noting that, if he chooses, he may pay the amount ordered by instalments, with a final instalment on or before that date. Payments received are to be placed by the Registrar into an interest-bearing account until further order of the Court.
- (b) The costs determination of the Authority is stayed until **4pm on 10 April 2026**. Provided Mr Sakgun has paid the full sum of \$4,000 into Court by that date, the stay will continue until further order of the Court.
- (c) The Employment Court proceedings are stayed pending payment of security. In any event, a directions conference will be arranged as soon as practicable after **4pm on 10 April 2026**.

[16] Costs in respect of both these applications are reserved pending the final outcome of these proceedings.

J C Holden
Judge

Judgment signed at 3.30 pm on 20 February 2026