

CASE SUMMARY

High Court refuses to grant stay of liquidation pending outcome of judicial review proceeding

Decision date: 15 September 2025

CSUM 25/12

CASE

CIR v KD Transport Limited [2025] NZHC 2671

LEGISLATIVE REFERENCES

Companies Act 1993

High Court Rules 2016 r 1.19, 31.11

Judicial Review Procedure Act 2016 s 15

Tax Administration Act 1994 (TAA) s 3, s 6, s 6A, s 176, s 177, s 177A, Pt 11

CASE LAW REFERENCES

Pauaco Ltd v Seasir Ltd [2025] NZHC 2058

Commissioner of Inland Revenue v RLITS Contracting Ltd [2024] NZHC 1258

Nemisis Holdings Ltd v North Harbour Industrial Holdings Ltd (1989) 1 PRNZ 379

Carlton & United Breweries Ltd v Minister of Customs [1986] 1 NZLR 423 (CA)

Shane Warner Builders Ltd v Commissioner of Inland Revenue [2018] NZHC 1654

Eastbus Ltd v Commissioner of Inland Revenue HC Dunedin CIV-2006-412-153, 3 March 2006

P v Commissioner of Inland Revenue [2015] NZHC 2293

Anthony v Commissioner of Inland Revenue [2025] NZHC 1382

Summary

The Commissioner commenced liquidation proceedings against KD Transport Limited (KD). KD requested relief under s 177 of the TAA which the Commissioner declined. KD sought judicial review of the Commissioner's decision declining its proposal for relief and also applied to stay the liquidation proceeding, pending determination of its judicial review application. The stay application needed an extension of time as it was made outside the five working day period prescribed in the High Court Rules. The application for an extension of time was dismissed, and the Associate Judge made an order liquidating KD.

Impact

The Court confirmed earlier case law that it is in the public interest that the Commissioner carry out his statutory duties, including completing enforcement action in a timely manner. The Court also confirmed that requiring the Commissioner to be a party to judicial review proceedings which are without merit would undermine the integrity of the tax system and frustrate the Commissioner's enforcement function in relation to undisputed debts. When PAYE and GST are not paid, other taxpayers are entitled to expect the Commissioner will take a firm line.

Facts

In March 2025, the Commissioner applied to liquidate KD for substantial GST and PAYE arrears. The application was advertised, but in May 2025 the liquidation proceedings was adjourned to allow time for KD to file a proposal.

A request for relief was made under s 177 of the TAA on the basis that KD was a relief company and that under s 177A recovery of the company's outstanding tax would place the director and his dependents in serious hardship. KD offered a lump sum payment and regular monthly payments, and requested remission of penalties and interest. The Commissioner requested further information from the company, but it was not all provided. The request for relief was declined by the Commissioner.

The company applied to judicially review the Commissioner's refusal to grant relief, and applied to stay the liquidation proceeding pending the outcome of the judicial review application. As the stay application was made more than five working days after KD was served with the liquidation proceeding, KD needed an extension of time to be able to file the stay application.

Subsequently, KD made a fresh request for relief on the express basis that it superseded the earlier request, however, this request offered nothing by way of payments. The second request for relief was also declined by the Commissioner.

Issue

Whether the Court should grant KD an extension of time to apply to stay the Commissioner's liquidation proceeding.

Decision

Associate Judge Paulsen found that there was no basis for the Court to grant an extension of time to make an application under r 31.11 and even if such an extension was granted, the application for a stay must be refused. His Honour took the following factors into account:

- The company had been behind in its tax obligations for several years.
- It was put on notice in early December 2024 that the Commissioner may take legal action against it.
- The director indicated at that time that a proposal would be made to the Commissioner but that did not occur. A proposal was only submitted to the Commissioner three weeks after the first call.
- There was no explanation by the company why it could not have made a request for relief to the Commissioner earlier and applied for stay of the proceeding within the time required by r 31.11.

His Honour acknowledged there is obvious prejudice to the Commissioner when taking action to recover outstanding tax if liquidation or bankruptcy proceedings can be delayed by last minute applications for financial relief and then for stay, pending challenge by judicial review.

More substantively, the Judge noted that granting an extension of time would serve no purpose. The sole basis advanced for the granting of a stay was so that KD's application for judicial review of the Commissioner's initial decision refusing relief could be determined. KD made a subsequent request for relief on the express basis that it superseded its first request for relief. Whether or not there was any merit in the application for judicial review (which the Commissioner denied), there was no longer any live issue as between KD and the Commissioner in relation to the first application for relief. There was no prospect that the Court would grant relief requiring the Commissioner to reconsider that decision.

Associate Judge Paulsen reiterated that in considering whether to accept or refuse a request for relief, the Commissioner exercises a broad discretion and considers a range of factors within the statutory framework.

The Judge cited with approval comments in *Shane Warner Builders Ltd v Commissioner of Inland Revenue* that it was in the public interest for the Commissioner to be able to collect taxes when they became due, and that the integrity of the tax system would be undermined if the Commissioner's attempt to enforce payment of undisputed debts was frustrated by unmeritorious judicial review proceedings.

An order was made liquidating the company.

About this document

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