

CASE SUMMARY

High Court dismisses application for interim stay and grants application to strike-out paragraphs of the statement of defence on basis of s 109 of the Tax Administration Act 1994

Decision date: 17 April 2026 (reissued 28 May 2026)

CSUM 26/07

CASE

Commissioner of Inland Revenue v Jia [2026] NZHC 899

LEGISLATIVE REFERENCES

Tax Administration Act 1994, ss 3 definition of "disputable decision", 109, 113, Part 8A (138A-138S)

High Court Rules 2016, r 15.1

Bill of Rights Act 1990, s 27

LEGAL TERMS

Interim stay; strike out; judicial review; natural justice; issue estoppel

CASE LAW REFERENCES

X v Commissioner of Inland Revenue [2021] NZTRA 4

Danone Asia Pacific Holdings v Fonterra Co-Operative Group Ltd [2014] NZHC 1681

Kidd v Registrar-General of Land [2021] NZHC 1747

Brown v Perpetual Trust Limited [2022] NZHC 1726

Tannadyce Investments Ltd v Commissioner of Inland Revenue, [2011] NZSC 158, [2012] 2 NZLR 153

Charter Holdings Limited v Commissioner of Inland Revenue [2016] NZCA 499

Daganayasi v Minister of Immigration [1980] 2 NZLR 130 (CA)

Attorney-General v Prince and Gardner [1998] 1 NZLR 262 (CA)

Lendlease Capital Services Pty Ltd v Arena Living Holdings Ltd [2021] NZCA 386

Couch v Attorney-General [2008] NZSC 45, [2008] 3 NZLR 725

Summary

The Commissioner of Inland Revenue (the **Commissioner**) sought orders striking out certain paragraphs of the first defendant's statement of defence on the basis that the identified paragraphs disclose no reasonably arguable defence.

The Commissioner argued that s 109 of the Tax Administration Act 1994 (**TAA**) barred the first defendant, Xiaoquan Jia, from challenging the correctness of income tax assessments in these civil debt proceedings.

One week before the hearing, the first defendant applied for an interim stay. He argued that he was applying for the Commissioner to amend the assessments under s 113 of the TAA (**s 113 application**) and that the proceedings should be stayed pending its determination.

The Court dismissed the stay application and granted the Commissioner's strike-out application.

Impact

The decision confirms:

- the broad scope of s 109 in preventing collateral challenges
- that a s 113 application will rarely justify a stay
- that disputes must be pursued within the statutory disputes process under Parts 4A and 8A of the TAA

Facts

The Commissioner issued income tax assessments (**Assessments**) for the first defendant for the 2014 to 2016 tax year. The first defendant commenced challenge proceedings against the Commissioner under Part 8A of the TAA in the Taxation Review Authority (**TRA**).

The Assessments were upheld by the TRA without alteration on 29 October 2021 (**TRA Decision**).

Civil proceedings were issued to recover the debt. The Commissioner sought to strike out certain paragraphs of the first defendant's statement of defence on the basis s 109 prevents the first defendant from seeking to dispute the Assessments in the context of these debt proceedings.

The Commissioner also submitted that the first defendant is estopped from pleading the identified paragraphs by res judicata and issue estoppel so that the relevant pleadings should be struck out as an abuse of process.

The first defendant filed an application for an interim stay on the basis that he was filing the s 113 application. A copy of the s 113 application was provided at the strike out hearing.

Following the hearing, a memorandum was filed on behalf of the Commissioner attaching a copy of a letter from the Commissioner dated 10 October 2025 declining to consider the first defendant's s 113 application. The letter stated:

The Commissioner declines to consider Mr Jia's application to amend his assessments under section 113. Section 113 is only engaged where the Commissioner thinks it is necessary to amend an assessment in order to ensure its correctness. The assessments sought to be amended in Mr Jia's application have previously been challenged by Mr Jia and determined to be correct by a Hearing Authority using its powers under section 138P of the TAA. The Commissioner is accordingly satisfied that the assessments in question are correct.

The first defendant filed a memorandum in response advising they had filed an application for judicial review "to quash the declinature and to remit the section 113 Application for further consideration". The memorandum recorded that the prospect of filing judicial review proceedings had been outlined in counsel's oral submissions at the 18 September 2025 hearing. Counsel further noted that the terms of the stay order sought remain the same, except that the grounds are now to allow the determination of the judicial review application.

Issues

1. Whether a stay should be granted pending judicial review.

2. Whether certain paragraphs of the statement of defence should be struck out on the basis they disclose no reasonably arguable defence.

Decision

The Court found there were no rare or compelling circumstances justifying a stay. Even if the judicial review proceeding was successful there is no reasonable prospect that the Commissioner would do so when the context and background are considered.

The Court noted the TRA Decision stated the Commissioner's quantification of construction costs could not be said to lack reason, integrity or plausibility and construction costs have not been "plucked out of the air", as submitted by counsel for the first defendant.

The Court distinguished it from *Charter Holdings Limited v Commissioner of Inland Revenue* (where the taxpayer had not invoked the dispute procedures under the TAA). The Court held that allowing a stay in these circumstances would undermine the statutory bar in s 109 and be inconsistent with the Supreme Court decision in *Tannadyce Investments Ltd v Commissioner of Inland Revenue* if a s 113 application, or judicial review proceedings following, could justify a stay of proceedings to enforce debts owed to the Commissioner in such circumstances.

The Court noted that although the Commissioner records in his s 113 letter that his decision was to decline to consider the s 113 application, the s 113 letter goes into considerable detail as to why the Assessments ought not to be amended. The letter confirms that this was because the Commissioner determined that it was not necessary to amend the Assessments to ensure correctness (as s 113 provides for), including because the TRA had already determined their correctness on the balance of probabilities, and because the first defendant engaged in the disputes and challenge procedures under the TAA.

The Court struck out the relevant paragraphs under r 15.1(a) because they disclosed no reasonably arguable defence. As the TRA Decision finally determined the correctness of the assessments, s 109 barred the first defendant from re-litigating those issues in debt recovery proceedings.

Finally, the Court noted that there also appeared to be a basis for striking out the paragraphs as an abuse of process relying on issue estoppel under r 15.1(1)(d) of the High Court Rules. However, it is unnecessary to decide this question because of the view it reached that the pleadings in issue disclose no reasonably arguable defence as they are barred by s 109 of the TAA and so ought to be struck out under r 15.1(1)(a).

About this document

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