IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA665/2025
[2026] NZCA 155

BETWEEN	GREEN & MCCAHILL HOLDINGS LIMITED Applicant
AND	EVAN CHRISTOPHER WILLIAMS First Respondent
	ARA WEITI DEVELOPMENT LIMITED Second Respondent
	ARA WEITI BAY DEVELOPMENT LIMITED Third Respondent
	ARA WEITI INVESTMENTS LIMITED Fourth Respondent
	LAMBTON QUAY PROPERTIES NOMINEE LIMITED Fifth Respondent
	CLEARWATER CAPITAL PARTNERS DIRECT LENDING OPPORTUNITIES FUND LP AND CLEARWATER NZ1 SMA LIMITED Sixth Respondents

Court:	Katz and Ellis JJ
Counsel:	B H Dickey KC and K H Morrison for Applicant D J Chisholm KC and M H L Morrison for First to Fourth Respondents R J Gordon and L C Furley for Fifth Respondent D T Broadmore and C R Tataru for Sixth Respondents
Judgment: (On the papers)	1 May 2026 at 1.00 pm

JUDGMENT OF THE COURT

A The application for a stay dated 6 March 2026 is declined.

B The application for an interim stay dated 9 April 2026 is declined.

C The applicant must pay costs to the first to fourth respondents (who were jointly represented) for a standard application on a band A basis, together with usual disbursements.

D The applicant must pay costs to the sixth respondents for a standard application on a band A basis, together with usual disbursements.

REASONS OF THE COURT

(Given by Katz J)

Introduction

[1] The appellant, Green & McCahill Holdings Ltd (Green & McCahill) has appealed a High Court decision of Becroft J, delivered on 5 September 2025 (reissued on 25 September 2025 and on 14 October 2025).[1] The Judge dismissed Green & McCahill's various claims against the respondents and awarded judgment in favour of the fourth respondent (Ara Weiti Investments Ltd (AWIL)) on its counterclaim, in the sum of $20,133,278 plus 21 per cent compounding interest calculated from 7 July 2020.[2]

[2] Green & McCahill applied to the High Court to stay enforcement of the counterclaim judgment, pending the outcome of its appeal to this Court. The High Court declined to grant a stay, for reasons we address further below.[3]

[3] On 5 March 2026, Green & McCahill filed an interlocutory application for a stay of execution in this Court. After being advised that the application had been set down for a hearing on the papers on 8 June 2026, Green & McCahill filed an "interim" stay application on 9 April 2026, to protect its position until the substantive stay application was heard and determined.

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1 *Green & McCahill Holdings Ltd v Williams* [2025] NZHC 2581 [substantive judgment].

2 At [1300].

3 *Green & McCahill Holdings Ltd v Williams* [2026] NZHC 274; and *Green & McCahill Holdings Ltd v Williams* [2026] NZHC 690 [stay decision].

[4] We address the substantive stay application in this judgment. This also has the effect of determining the interim stay application.

Background

[5] These proceedings have a long and complex history. The trial took place over 40 court sitting days and generated 2,822 pages of evidence.[4] The High Court judgment runs to 315 pages or 1306 paragraphs. The relevant background is comprehensively set out in that judgment. At the risk of over-simplification, we provide only a brief summary for present purposes.

[6] The proceedings arise out of a large-scale property subdivision development at Weiti Bay, north of Auckland. Green & McCahill owned the land and entered into a limited partnership with a property developer, Mr Evan Williams (and his associated companies) to carry out the project.

[7] To fund the development, Green & McCahill mortgaged portions of its land to secure loans from various commercial lenders, including Lambton Quay Properties Nominee Ltd (Lambton Quay).[5] When the development faced delays, slower than expected sales, and cost overruns, Green & McCahill refused to release land titles to purchasers unless it was paid a specified sum in priority to the secured lenders, which the Judge found "effectively tanked the development".[6] This prompted Lambton Quay to conduct a mortgagee sale of the land.[7] The land was sold for $35 million to new entities controlled by Mr Williams and funded by Clearwater Capital Partners Direct Lending Opportunities Fund LP and Clearwater NZ1 SMA Ltd (together, Clearwater).[8]

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4 Substantive judgment, above n 1, at [24].
5 At [12]–[13] and [45]–[46].
6 At [16]–[17], [339], [791]–[792], [796]–[797] and [1193].
7 At [847]–[848].
8 At [43]–[44] and [960] and following.

[8] Green & McCahill subsequently sued Mr Williams, the purchasing companies, and the lenders, advancing four causes of action:

(a) Negligent misstatement and misleading and deceptive conduct under the Fair Trading Act 1986: Green & McCahill claimed that Mr Williams had induced them to enter into the mortgages by falsely representing that the risks were low and that Green & McCahill would be paid before the lenders.

(b) Breach of mortgagee duties: Green & McCahill alleged Lambton Quay conducted a "sham" mortgagee sale at an undervalue in a conspiracy with Mr Williams and Clearwater to steal the land.

(c) Equitable contribution: Green & McCahill sought financial contribution from Mr Williams based on his personal guarantee to the lenders.

[9] AWIL, a company associated with Mr Williams that was assigned the remaining loan debt after the mortgagee sale, filed a counterclaim to enforce the residual debt owing by Green & McCahill following the mortgagee sales.[9] Green & McCahill advanced two primary defences to the counterclaim:

(a) First, Green & McCahill argued under contractual and equitable principles that an assignment of a debt cannot be used to benefit a "wrongdoer". Green & McCahill contended that AWIL and Mr Williams acted with unclean hands in relation to the June 2020 mortgagee sale. AWIL should not therefore be allowed to enforce the assignment of the residual debt against Green & McCahill. While Green & McCahill framed this as an argument about the "unenforceability" of the debt, the Judge noted that succeeding on this "dirty hands" argument would effectively invalidate the assignment entirely.[10]

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9 At [44] and [55].

10 See stay decision, above n 3, at [75].

(b) Second, Green & McCahill claimed that approximately $10 million of the interest charged on the loan was legally unenforceable. This defence relied on s 99B of the Credit Contracts and Consumer Finance Act 2003 (CCCFA). Specifically, it was argued that because the original lender, Lambton Quay, had failed to register as a financial services provider under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 until July 2019, it was statutorily prohibited from charging "costs of borrowing" (which includes interest) prior to a January 2020 law change. Green & McCahill argued this invalid interest should be set off against the residual debt AWIL was seeking to recover.

[10] The Judge dismissed all of Green & McCahill's causes of action. He found Mr Williams to be an honest, meticulous, and credible witness,[11] whereas Green & McCahill's director, Mr Liu, was found to be unreliable, evasive, and willing to compromise the truth to suit his case.[12] The Judge gave detailed reasons for his credibility findings and provided a number of supporting examples.[13]

[11] The Judge found that Mr Williams had not made negligent misstatements or engaged in misleading and deceptive conduct.[14] His financial forecasts and opinions regarding risk were honestly held and reasonably based at the time they were made.[15] Green & McCahill, which was advised by an "armada" of top-tier legal and financial experts, was found to have known of the risks and to have been aware that the lenders had to be repaid first.[16]

[12] In respect of the breach of mortgagee duties claim, the Judge found that there was no "plan, plot or conspiracy" to deprive Green & McCahill of its land.[17] Lambton Quay ran a genuine, arm's-length open-market campaign through Bayleys

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11 Substantive judgment, above n 1, at [122].
12 At [88].
13 At [89]–[94].
14 At [641] and [697].
15 At [307]–[308].
16 At [173], [349], [577], [672] and [738]–[739].
17 At [1005] and [1159]–[1160].

Real Estate and achieved the best reasonably obtainable price ($35 million) for a distressed asset during the COVID-19 pandemic.[18]

[13] In the Judge's view, Green & McCahill had essentially caused its own loss. It had deliberately "tanked" the development by breaching the financing agreements and adopting a "no ball" strategy, which had "backfired on it with disastrous consequences".[19] Consequently, Green & McCahill had "dirty hands" and could not claim equitable contribution.[20]

[14] The Judge rejected Green & McCahill's defences to AWIL's counterclaim and found that the counterclaim had been proved. Green & McCahill was ordered to pay the outstanding residual debt of $20,133,278 plus 21 per cent compounding interest calculated from 7 July 2020.[21] As of 28 October 2025, the total judgment debt was over $60 million. It continues to grow at a rate of over $1 million per month and, according to interest calculation tables submitted in evidence, the debt reached $66,436,809 by the end of March 2026 and is projected to reach $67,583,526 by the end of April 2026.

[15] AWIL proposes to execute its judgment debt by enforcing a High Court sale order over the subject land. AWIL plans to actively participate as a bidder in the sale process, which will be conducted by the High Court Sheriff. If AWIL is the successful purchaser, it proposes to pay for the land by way of a set-off against its judgment debt, meaning it would simply deduct the purchase price from the amount Green & McCahill owes it, rather than paying in cash (except for any cash the Sheriff directs is necessary to cover the costs and expenses of the sale).

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18 At [1054], [1092], [1096]–[1097] and [1109].
19 At [339], [1135] and [1144].
20 At [1195].
21 At [1300].

Stay applications — relevant legal principles

[16] In seeking a stay, Green & McCahill relies on r 12(3)(a) of the Court of Appeal (Civil) Rules 2005, which relevantly provides:

> **12 Stay of proceedings and execution**
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> …
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> (3) Pending the determination of … an appeal, the court appealed from or the Court may, on an interlocutory application,—
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> (a) order a stay of the proceeding in which the decision was given or a stay of the execution of the decision; or
>
> (b) grant any interim relief.
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> …
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> (5) If the court appealed from refuses to make an order under subclause (3), the Court may, on an interlocutory application, make an order under that subclause.
>
> …

[17] In *Keung v GBR Investment Ltd* this Court described the approach to a stay application under r 12(3):[22]

> [11] The stay application is brought under r 12(3) of the Court of Appeal (Civil) Rules 2005. In determining whether or not to grant a stay, the Court must weigh the factors "in the balance" between the successful litigant's rights to the fruits of a judgment and "the need to preserve the position in case the appeal is successful". Factors to be taken into account in this balancing exercise include:
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> (a) Whether the appeal may be rendered nugatory by the lack of a stay;
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> (b) The bona fides of the applicant as to the prosecution of the appeal;
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> (c) Whether the successful party will be injuriously affected by the stay;
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> (d) The effect on third parties;
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> (e) The novelty and importance of questions involved;

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[22] *Keung v GBR Investment Ltd* [2010] NZCA 396, [2012] NZAR 17 at [11] (footnotes omitted), citing *Dymocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* (1999) 13 PRNZ 48 (HC) at [9].

(f) The public interest in the proceeding; and

(g) The overall balance of convenience.

That list does not include the apparent strength of the appeal but that has been treated as an additional factor.

Should the stay application be granted?

[18] The first to fourth respondents (Mr Williams and the Ara Weiti companies) and the sixth respondents (Clearwater) strongly oppose the stay application. The fifth respondent (Lambton Quay) takes no position and abides by the Court's decision. For the purposes of this application, we refer to the first to fourth and sixth respondents as "the respondents", for ease of reference.

[19] We address each of the key arguments advanced by Green & McCahill in support of the stay application below, together with any additional arguments advanced by the respondents.

Will sale of the land cause permanent harm to Green & McCahill and render its appeal nugatory?

[20] Green & McCahill submits that the sale of the subject land will cause it irreversible harm and render its appeal nugatory, as damages would be an inadequate or unavailable remedy if it is ultimately successful in the appeal. There are two key limbs of this argument:

(a) First, Green & McCahill submits that AWIL is a shell company with no assets other than the assigned debt. If AWIL succeeds in purchasing the land (using a debt set-off) it will likely quickly sell or transfer it. Hence, if the appeal is successful Green & McCahill will irretrievably lose the subject land, and AWIL will not be in a position to compensate Green & McCahill for that loss.

(b) Second, Green & McCahill submits that as land is recognised at law as having unique value, monetary damages will be an inadequate remedy for its loss. More specifically, Green & McCahill says that the subject

land holds special sentimental value to the Liu family, because Mr Liu's late father originally acquired it over 20 years ago due to its beauty.

[21] These arguments were also advanced in support of the stay application in the High Court. The Judge acknowledged that if the stay were declined, the enforcement of the judgment debt would inevitably result in Green & McCahill's irretrievable loss of the subject land, which is its only asset available to satisfy the debt. However, the Judge concluded there would be no clear prejudice to Green & McCahill arising from loss of the land because, even if its appeal is completely successful, it is destined to lose the land anyway.[23] The reason for this is that, even if Green & McCahill were to succeed on appeal and the assignment of its debt to AWIL was invalidated (on the basis of Green & McCahill's "dirty hands" defence) the debt would not simply disappear. Rather, it would revert to the original lender, Lambton Quay, who would also enforce the debt against the land.[24] Green & McCahill would still owe a debt, it would simply be to a different creditor — Lambton Quay rather than AWIL. There is therefore no realistic prospect of Green & McCahill retaining the land, whatever the outcome of the appeal.[25]

[22] The Judge took the submission that losing the land would cause irredeemable prejudice to Green & McCahill because of the special sentimental value to the Liu family with "several grains of salt".[26] He noted that Green & McCahill is a commercial entity that purchased the land as a commercial venture with "eyes wide open" to make a substantial profit.[27] It had previously offered to sell the land, and it had willingly mortgaged it for development financing. The assertions of deep emotional attachment had an "air of complete unreality".[28]

[23] The respondents support the Judge's findings on these issues, largely for the reasons given by the Judge. They further submit that:

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23 Stay decision, above n 3, at [61]–[64] and [68].
24 At [75].
25 At [75]–[81].
26 At [85]–[86].
27 At [87].
28 At [89].

(a) If Green & McCahill were to succeed on its "dirty hands" defence and the assignment to AWIL was unwound, Green & McCahill would owe roughly $168 million (including default interest) to Lambton Quay, who would sell the land to realise its security. Further, even if Green & McCahill were to win its CCCFA interest defence the remaining "clean" debt would still be around $29 million, which still exceeds the land's maximum forced sale value of $24 million.

(b) The assertion that AWIL is a shell company with no assets is incorrect. Rather, if the assignment from Lambton Quay was set aside, AWIL would have remedies against Lambton Quay, which is a substantial and solvent financial institution.

(c) The claim that the land has particular sentimental value to the Liu family is irreconcilable with Green & McCahill's commercial actions. Green & McCahill granted an option to sell all the land in 2005, voluntarily granted mortgages over it knowing the risks, and allowed two other parcels to be sold at mortgagee sale while refusing to exercise its equity of redemption. Furthermore, the Liu family resides offshore and has never lived in New Zealand. In any event, the respondents submit, the Liu family (who are said to be extremely wealthy international investors) could purchase the land themselves at the Sheriff's public auction, if they wish to retain it.

[24] We agree with the Judge's analysis. Sale of the land will not render the appeal nugatory, for the reasons he gave and also for the further reasons advanced by the respondents. Green & McCahill's fundamental difficulty is that, regardless of who the creditor is (AWIL or Lambton Quay) it owes a massive underlying debt arising out of the failed development, in circumstances where the only asset it has available to meet that debt is the subject land. We agree with the Judge that the loss of the land is inevitable in such circumstances. The Judge was correct to treat the claimed sentimental value of the land with "several grains of salt", for the reasons he gave.

[25] In conclusion, the permanent loss of the subject land appears to be an inevitable consequence of the commercial transactions that Green & McCahill entered into, regardless of who the correct creditor is. There is accordingly no meaningful causative link between the stay application and the loss of land. Failing to grant a stay will not render the appeal nugatory.

Would granting a stay cause prejudice to the respondents?

[26] Green & McCahill submits on appeal (as it did in the High Court) that granting a stay would not materially prejudice the respondents.

[27] The Judge rejected this submission. He found that granting a stay would cause "enormous prejudice" and "massive, if not economically fatal, loss" to the respondents.[29] He accepted that the respondents are "haemorrhaging massive amounts of interest".[30] Granting a stay would therefore raise the very real prospect of the relevant Ara Weiti companies being forced into liquidation and Mr Williams facing personal bankruptcy.[31] The Judge noted that the respondents are "desperate to complete the stalled subdivision", but progressing the development is practically impossible while Green & McCahill continues to own the subject land.[32]

[28] Green & McCahill submits that the Judge erred in these findings. It says that any increase in the financial shortfall caused by delayed enforcement has no practical meaning. Because the judgment debt already far exceeds the actual value of the remaining land, AWIL will not suffer any increased prejudice from the delay. Further, Green & McCahill says that it has committed not to deal with the subject land pending the appeal, and AWIL is already protected by a registered charging order that prevents the land from being disposed of without its knowledge.

[29] The respondents submit that the Judge was correct to find that granting a stay would cause them irreparable prejudice. Because AWIL's recovery against Green & McCahill is strictly "limited recourse" (capped at whatever the land eventually sells

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29 At [125(f)] and [126].
30 At [125(f)].
31 At [114]–[116] and [125(f)].
32 At [110] and [125(f)].

for), the cost of any delay is borne entirely by the respondents, not Green & McCahill. Mr Williams has provided affidavit evidence that the Ara Weiti companies owe over $27 million to Clearwater. This debt accrues interest at 15 per cent per annum, adding approximately $350,000 in interest every month. The respondents say that if the stay is granted and they cannot reduce this debt by either selling the land or buying it to unlock their development, the default and demise of the Ara Weiti companies is inevitable. Furthermore, because Mr Williams has personally guaranteed this debt up to $35 million, the grant of a stay could also lead to his personal bankruptcy. Additionally, the overall judgment debt (which now exceeds $60 million) is accruing interest at a rate of over $1 million per month, continually increasing the massive shortfall.

[30] Again, we see no error in the Judge's analysis. The respondents would clearly be very significantly prejudiced by the grant of a stay. A stay would delay the development, cause significant further financial losses to the respondents, and potentially result in their liquidation or bankruptcy. These are very significant adverse consequences. We also accept the respondents' submission that it is relevant to the issue of prejudice that Green & McCahill has refused to provide any undertakings or security to mitigate the prejudice to the respondents that would arise if the stay was granted but the appeal ultimately failed.

Green & McCahill's bona fides

[31] AWIL submits that Green & McCahill lacks bona fides and the stay application is merely another cynical tactic to put pressure on Mr Williams.

[32] The Judge noted the respondents' arguments that Green & McCahill's pro forma and unparticularised appeal, combined with its failure to provide any meaningful undertakings or security to address the respondents' prejudice, suggested a cynical, tactical motive. The respondents argued this was consistent with Green & McCahill's previously proven strategy of "tanking" the development to bankrupt Mr Williams. Ultimately, however, given that every party has a statutory right to appeal, the Judge concluded it would be wrong to reject Green & McCahill's claim that the

appeal was brought in good faith (although the Judge noted he could not rule out the respondents' suspicions either).[33]

[33] On appeal, the respondents again argue that Green & McCahill is not acting bona fides, and that the appeal is just another tactical step in Mr Liu's long-term strategy to outlast and bankrupt them. Green & McCahill, on the other hand, asserts that it is genuine in pursuing the appeal and says that the respondents' allegations of a cynical delaying strategy are completely unwarranted.

[34] Having presided over a nine-week trial and the subsequent High Court stay application, the Judge is clearly in a significantly stronger position than we are to assess Green & McCahill's bona fides in bringing the appeal. Ultimately, while he appears to have harboured some suspicions, the Judge was not willing to find that the appeal lacks bona fides. In our view that was the appropriate conclusion to reach in all the circumstances.

What are the merits of the appeal?

[35] Turning to the merits of the appeal, the Judge said he found it extremely difficult to assess the strength of Green & McCahill's appeal because it is a "wholesale appeal" that challenges every factual and legal finding without specific particularisation.[34] He expressed the view, however, that the appeal would face "very significant hurdles" given it is primarily a challenge to factual findings.[35] The Judge acknowledged, however, that Green & McCahill's second defence to the counterclaim (the CCCFA defence) raises a difficult legal issue. However, even if this aspect of the appeal were to succeed, the remaining debt would still vastly exceed the value of the land.[36] The Judge ultimately concluded that the appeal lacked the obvious or compelling strength required to clearly support a stay.[37]

[36] In this Court, Green & McCahill submits (at some length) that its appeal has merit. For example, an appellate court might view key documentary evidence

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33 At [97].
34 At [45] and [98].
35 At [101].
36 At [105].
37 At [125(e)].

differently to the trial Judge and find an intention to mislead. It also submits that its CCCFA defence is a strong one.

[37] The respondents submit that Green & McCahill's appeal is "exceptionally weak", "without merit", and has little to no prospect of success, largely for the reasons given by the Judge. They submit there is no realistic prospect of an appellate court unwinding the arm's-length commercial transactions at issue in this appeal.

[38] At this preliminary stage it is difficult to undertake anything more than a high level and cursory assessment of the prospects of success on appeal. We agree with the Judge, however, that the appeal is likely to face significant hurdles. The judgment largely involves the application of well-established legal principles to the particular facts of the case (as found by the Judge). Further, as the Judge noted, credibility findings are vital to resolving this case. Success on appeal will therefore require the appellant to persuade this Court that numerous adverse factual and credibility findings made by the Judge (following a nine-week trial involving over 50,000 documents) should be overturned. This may well prove challenging. That said, at this preliminary stage it cannot be said that the appeal is clearly hopeless. The Judge accepted, for example, that the CCCFA ground of appeal is arguable.

[39] In conclusion, we see no reason to differ from the Judge's assessment that the appeal lacks the obvious or compelling strength required to clearly support a stay. We therefore consider the merits of the appeal to be a neutral factor.

Are there broader public interest factors at stake?

[40] The Judge briefly addressed the "novelty and public interest" factor, concluding that there is little legal novelty or wider public interest in the issues raised by the appeal. He noted that the parties accepted this. The Judge accordingly treated the public interest as a neutral factor in his analysis.[38]

[41] In this Court, Green & McCahill submits that there is a clear public interest in the appeal because the proceeding involves complex issues set against the factual

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[38] At [123].

background of a local party and a foreign investor. Green & McCahill argues that as New Zealand welcomes more foreign investment, these types of commercial scenarios will become more common, meaning that providing clarity on the standard of conduct expected of the parties has public interest.

[42] We do not accept that this gives rise to any broader public interest. Rather, this appeal largely involves the application of well-established legal principles to the unique facts of this case. The Judge was therefore correct to find that novelty and public interest is a neutral factor.

Where does the overall balance of convenience lie?

[43] Taking all of these matters into account, the Judge was correct, in our view, to find that the overall balance of convenience strongly favours allowing AWIL to enforce its counterclaim judgment immediately.[39] Ultimately it is necessary to balance AWIL's right to the fruits of its successful counterclaim against the need to preserve Green & McCahill's position if its appeal succeeds. The determining factor, in our view, is the very significant prejudice that AWIL and the other respondents will suffer if a stay is granted. As the Judge observed, the respondents are "haemorrhaging" massive amounts of interest, are desperate to complete the stalled subdivision, and face the prospect of liquidation and personal bankruptcy if a stay is granted. The underlying debt has now been outstanding for almost seven years.

[44] On the other hand, although enforcement will inevitably result in Green & McCahill's irretrievable loss of the subject land, there is no clear prejudice to it, because it is virtually inevitable that it will lose the land even if its appeal is successful, for the reasons we have outlined above. Enforcement of the judgment will not render the appeal nugatory.

[45] Although the other factors we have discussed are all comparatively neutral, their combined tenor also favours the respondents. Taking all of the matters outlined above into account, it is our view that the overall balance of convenience weighs heavily against granting a stay.

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[39] At [124] and [127].

Result

[46] The application for a stay dated 6 March 2026 is declined.

[47] The application for an interim stay dated 9 April 2026 is declined.

[48] The applicant must pay costs to the first to fourth respondents (who were jointly represented) for a standard application on a band A basis, together with usual disbursements.

[49] The applicant must pay costs to the sixth respondents for a standard application on a band A basis, together with usual disbursements.

Solicitors:
Cuncannon, Auckland for Applicant
Morrison Partners, Auckland for First to Fourth Respondents
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