

CITATION: *Arnhem Earthmoving and Mechanical Pty Ltd v NRR Equipment Pty Ltd & Anor (No. 2) [2026] NTSC 79*

PARTIES: ARNHEM EARTHMOVING AND
MECHANICAL PTY LTD
(ACN 134 418 670)

v

NRR EQUIPMENT PTY LTD (IN
ADMINISTRATION)
(ACN 623 826 264)

and

PEAT, Simon Langdon

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 2024-03216-SC

DELIVERED: 16 September 2026

HEARING DATE: 10 September 2026

JUDGMENT OF: Smyth A/AsJ

CATCHWORDS:

PRACTICE AND PROCEDURE – Application to stay execution of judgment – Application to set aside judgment – Whether execution ought to be stayed pending determination of application to set aside judgment – Broad discretionary power to stay execution of judgment – General considerations – Whether applicant demonstrated a bona fide and arguable challenge to judgment – Whether immediate enforcement may render pending application

nugatory – Whether stay necessary to preserve integrity of litigation and possible litigation – Balance of convenience – Stay granted

Arnhem Earthmoving & Mechanical Pty Ltd v NRR Equipment Pty Ltd & Anor [2026] NTSC 70; *Williamson v Commonwealth of Australia & Ors (No 2)* [2023] NTSC 95; *Hansen v Northern Land Council* (1998) 8 NTLR 143; *Mengel & Ors v Northern Territory of Australia* [1993] NTSC 23; (1993) 113 FLR 160; *Lefoe v Thoroughbred Racing Northern Territory* [2025] NTSC 22; *Alexander v Cambridge Credit Corp Ltd* (1985) 2 NSWLR 685; *Commissioner of Taxes for the NT v S.G Kennon & Co Pty Ltd* (Supreme Court of the Northern Territory, Thomas J, 14 January 1993); *R Holt & Co Katherine Pty Ltd v Hoar* (Supreme Court of the Northern Territory, Mildren J, 1989); *Mengel v Northern Territory (No 2)* (1993) 113 FLR 160; *Narain v Euroasia (Pacific) Pty Ltd* [2008] VSCA 195; *Cummings v Claremont Petroleum NL* (1996) 185 CLR 124, referred to

Bankruptcy Act 1966 (Cth), ss 41, 58, 60.
Supreme Court Rules 1987 (NT), rr 49.02, 66.16, 77.02

M Grant, Presidian, *Civil Procedure Northern Territory*

REPRESENTATION:

Counsel:

Plaintiff:	W Thomas
First Defendant:	No appearance
Second Defendant:	R Sanders

Solicitors:

Plaintiff:	Powell & Co Legal
Second Defendant:	Strongman & Crouch Solicitors

Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

*Arnhem Earthmoving and Mechanical Pty Ltd v NRR Equipment Pty Ltd
& Anor (No. 2) [2026] NTSC 79
No. 2024-03216-SC*

BETWEEN:

**ARNHEM EARTHMOVING AND
MECHANICAL PTY LTD**
Plaintiff

AND:

**NRR EQUIPMENT PTY LTD (IN
ADMINISTRATION)**
First Defendant

SIMON LANGDON PEAT
Second Defendant

CORAM: SMYTH A/AsJ

REASONS FOR DECISION

(Delivered 16 September 2026)

- [1] Simon Langdon Peat, the Second Defendant, applies pursuant to r 66.16 of the *Supreme Court Rules 1987* (NT) ('the Rules') for a stay of execution of the judgment and orders made on 18 August 2026 pending determination of his application under r 49.02 to set aside that judgment. The application to set aside the judgment is not before me; the question for present purposes is whether execution ought to be stayed pending determination of that application.

Background

- [2] The background to the substantive proceeding is captured by Huntingford J in *Arnhem Earthmoving & Mechanical Pty Ltd v NRR Equipment Pty Ltd & Anor.*¹ In summary, her Honour found that the Plaintiff and the First Defendant had entered into a contract for the provision of labour and equipment for haul road works, that the invoices the subject of the proceeding remained unpaid, that the Second Defendant was liable pursuant to a guarantee he had executed in favour of the Plaintiff, and that the pleaded set-off and related claims advanced by the Defendants were not made out. NRR Equipment Pty Ltd, the First Defendant, entered voluntary administration on 26 May 2026, resulting in the proceeding against it being stayed. The Second Defendant is the sole director of the First Defendant.
- [3] On 18 August 2026, judgment was entered for Arnhem Earthmoving and Mechanical Pty Ltd, the Plaintiff, in the sum of \$383,729.74, together with costs.² That judgment followed a trial at which the Second Defendant did not appear, notwithstanding that he had notice of the hearing and advised the Court on the morning of trial that he was unable to attend.
- [4] On 1 September 2026, the Second Defendant filed a summons seeking both a stay of execution and an order setting aside the judgment. In support of the application, the Second Defendant relied upon his affidavit made 1

¹ [2026] NTSC 70 at [2]-[9].

² Ibid at [47]-[48].

September 2026 and the affidavit of his solicitor, Jonathan Guy Joseph, made 9 September 2026, together with the correspondence annexed thereto. The Second Defendant also relied on his affidavit made 4 March 2026 and the affidavit of Andrew Justin Steven Carter made 2 March 2026 for the limited purpose of identifying the evidence said to support the proposed application under r 49.02 of the Rules.³ The Plaintiff relied upon the affidavit of Rodney John Perkins made 8 September 2026.

Applicable principles

[5] Rule 66.16 of the Rules confers a broad discretionary power upon the Court to stay execution of a judgment. A successful litigant is ordinarily entitled to the fruits of a judgment. The filing of an application challenging a judgment does not of itself justify a stay. The discretion must be exercised having regard to all relevant circumstances. The relevant circumstances are those pertaining to the enforcement of the judgment or order, not its validity or correctness. In my opinion considerations may include:

1. whether the proposed challenge to the judgment is bona fide and arguable;
2. whether refusal of a stay may render that challenge nugatory or otherwise occasion prejudice that cannot readily be remedied if the challenge succeeds;
3. prejudice to the judgment creditor if a stay is granted;

³ Outline of submissions filed by the Second Defendant on 10 September 2026 at [3]-[4].

4. whether a stay is necessary to preserve the subject matter or integrity of the litigation;
5. where the balance of convenience lies; and
6. the interests of justice generally.

[6] The parties' views differed as to the applicable formulation of the test. The Plaintiff relied upon *Hansen v Northern Land Council*⁴ and submitted that special circumstances are required before a stay should be granted. The Second Defendant relied upon the earlier decision of *Mengel & Ors v Northern Territory of Australia & Ors*,⁵ where it was held that it was not necessary for the applicant to show there are special circumstances. The Second Defendant also relied upon more recent authorities concerning stays pending appeal (or in respect to a pending judicial review application), including *Williamson v Commonwealth of Australia & Ors (No 2)*⁶ and *Lefoe v Thoroughbred Racing Northern Territory*.⁷ In *Williamson*, Luppino AsJ summarised the applicable principles and observed that proof of special or exceptional circumstances is not a prerequisite to the grant of a stay in an appeal. Rather, relevant considerations include whether the proposed challenge is bona fide and arguable, whether refusal of a stay may render that challenge nugatory, whether irreparable prejudice may arise, and where

4 (1998) 8 NTLR 143.

5 [1993] NTSC 23; (1993) 113 FLR 160.

6 [2023] NTSC 95 ('*Williamson*').

7 [2025] NTSC 22.

the balance of convenience lies. As noted by Grant CJ in *Civil Procedure Northern Territory*:⁸

This conflict in approach has not been authoritatively resolved in the Northern Territory. It might be considered, however, that there is little practical difference between the imposition of a requirement that the applicant show some form of special circumstances, and the proposition that the burden on an applicant seeking a stay is a heavy one.

- [7] It would appear to me that the preponderance of analogous authority, in this Court and more broadly, suggests that proof of special circumstances may not be a rigid prerequisite.⁹ Though, it is unnecessary to resolve any apparent tension between the authorities. Whether approached through the language of special circumstances or through the more recent formulations focusing on arguability, prejudice and balance of convenience, for the reasons which appear below, the result in the present case is the same. The more recent formulations provide the greatest guidance for the exercise of the wide discretion under r 66.16 of the Rules without the imposition of overly rigid principle.

Consideration

- [8] The first matter I take into account is the promptness with which the present application has been brought. Judgment was entered on 18 August 2026,

⁸ M Grant, Presidian, *Civil Procedure Northern Territory* (online at 11 September 2026) [5.1]-[5.81].

⁹ *Alexander v Cambridge Credit Corp Ltd* (1985) 2 NSWLR 685; *Commissioner of Taxes for the NT v S.G Kennon & Co Pty Ltd* (Supreme Court of the Northern Territory, Thomas J, 14 January 1993); *R Holt & Co Katherine Pty Ltd v Hoar* (Supreme Court of the Northern Territory, Mildren J, 1989); *Mengel v Northern Territory (No 2)* (1993) 113 FLR 160; *Hansen v Northern Land Council* [1999] NTSC 115; *Williamson v Commonwealth of Australia & Ors (No 2)* [2023] NTSC 95; *Lefoe v Thoroughbred Racing Northern Territory* [2025] NTSC 22.

and the present application was filed on 1 September 2026. There has been no material delay.

- [9] Secondly, it is necessary to consider whether the proposed application under r 49.02 of the Rules is sufficiently arguable to justify preserving the position pending its determination. Without descending into the merits of the substantive application, and bearing in mind the observations of Mildren J in *R Holt & Co Katherine Pty Ltd v Hoar*¹⁰ that the merits inquiry is not a demanding one and that the application is not to become a trial on affidavits, central to the Second Defendant's defence was a pleaded set-off.¹¹ In the proceeding, the Second Defendant claimed that the Plaintiff wrongfully withheld a Kenworth prime mover and low-loader and that as a consequence, the First Defendant incurred substantial financial loss. The Second Defendant now contends that: the judgment was entered following a trial conducted in his absence, meaning that the Plaintiff's evidence was not tested by cross-examination¹²; the evidence of Mr Carter was not adduced¹³ and substantial portions of his own affidavit material were not before the Court¹⁴; and additional documentary material said to bear upon the ownership of the relevant equipment, the alleged detention of that

10 Supreme Court of the Northern Territory, Mildren J, 1989 at p 8.

11 Outline of submissions filed by Second Defendant on 10 September 2026 at [10]-[24].

12 Ibid at [11]-[13].

13 Ibid at [17]-[18], where the Second Defendant submits there was direct evidence from Mr Carter that a request was made for release of the Kenworth truck, and that Mr Simpson refused to release it until the roadworks invoices were paid.

14 Ibid at [19]; In respect to the affidavit of Simon Langdon Peat made 4 March 2026, parts were not tendered which allegedly supported the pleaded set-off.

equipment, and the pleaded set-off was not adduced.¹⁵ The Second Defendant submits that had that material been before the Court and the Plaintiff's witness cross-examined, a materially different outcome may have resulted in relation to the pleaded set-off defence. The Second Defendant further submits that if the set-off was established in the amount alleged, it would have exceeded the Plaintiff's claim and therefore provided a complete defence to the proceeding. The Second Defendant does not presently contend that the trial judge erred on the evidence before her but rather he contends that the evidentiary record before the Court was materially incomplete because the trial proceeded in his absence.

[10] I accept the Plaintiff's submission that the proposed application under r 49.02 faces substantial difficulties.¹⁶ The decision of the trial judge discloses that the Court addressed the pleaded defence, the guarantee and the asserted set-off and made findings adverse to the Second Defendant. The circumstances surrounding the Second Defendant's non-attendance at trial are also matters which will inevitably be relevant to the substantive application.

[11] Nevertheless, I am not persuaded that the proposed application can presently be characterised as hopeless or bound to fail. Without expressing any

15 Ibid at [14]-[16], [20] in respect to the issues of ownership of the equipment and mutuality. Firstly, in respect to the existence of an asset sale agreement which was inadvertently omitted from the affidavit of Simon Langdon Peat made 4 March 2026. Secondly, in respect to further documents, which were exhibited to the affidavit of Simon Langdon Peat made 1 September 2026, said to support the content that the losses relied upon in the set-off were suffered by the First Defendant.

16 Submissions filed by Plaintiff on 10 September 2026 at [17]-[24].

concluded view as to its ultimate prospects, I am satisfied that the application has been brought bona fide and raises issues which cannot presently be characterised as untenable and which warrant determination by the judge hearing the application under r 49.02 of the Rules. The fact that the Second Defendant seeks to challenge the judgment does not, of itself, justify a stay. However, the existence of a bona fide and arguable challenge remains relevant in considering whether immediate enforcement may render that challenge practically ineffective before it can be determined.

[12] The more significant consideration concerns the consequences of immediate enforcement.

[13] The Plaintiff has foreshadowed enforcement by way of bankruptcy procedures founded upon the judgment debt. If execution proceeds immediately in that manner, there is a real possibility that consequences may arise extending beyond the ordinary enforcement of a money judgment.

[14] The Second Defendant submits that bankruptcy proceedings may materially affect the practical utility of the pending application to set aside the judgment. It is unnecessary to determine the correctness of that contention for present purposes. It is sufficient to observe that there is force in the submission that immediate enforcement through bankruptcy procedures may affect the practical utility of the application under r 49.02 of the Rules and, if that occurs, may risk rendering the substantive application practically

ineffective before it can be heard and determined.¹⁷ In particular, the Second Defendant contends that if sequestration were ultimately to follow, the conduct of the pending application may vest in a trustee in bankruptcy whose obligations would be to the estate and creditors generally.¹⁸ Whether or not that consequence would ultimately occur, and whether the application would thereafter continue to be pursued, need not be determined for present purposes. The possibility that the pending application may cease to remain under the practical control of the Second Defendant is itself a relevant consideration in assessing the utility of the application and the consequences of immediate enforcement.¹⁹

[15] I also take into account the possibility that if execution proceeds by way of bankruptcy notice, further interlocutory proceedings may arise under the *Bankruptcy Act 1966* (Cth) in respect to the timing or continuation of that process pending determination of the application under r 49.02 of the Rules. Without expressing any view as to the merits of any such application, the possibility of parallel litigation concerning substantially the same interim question is a relevant consideration.²⁰ Preservation of the status quo pending determination of the application before this Court is likely to avoid unnecessary expenditure of costs and the use of additional judicial resources.

17 See: *Narain v Euroasia (Pacific) Pty Ltd* [2008] VSCA 195 at [21]-[29].

18 Outline of submissions filed by Second Defendant on 10 September 2026 at [28]-[29]; Affidavit of Jonathan Guy Joseph made 9 September 2026 at [7]-[14], annexure ‘JGJ-1’.

19 *Cummings v Claremont Petroleum NL* (1996) 185 CLR 124.

20 Outline of submissions filed by Second Defendant on 10 September 2026 at [35]-[37].

[16] The Plaintiff submits that any prejudice associated with the prospect of bankruptcy could be avoided if the Second Defendant simply satisfied the judgment debt. Whilst the Second Defendant does not expressly depose that he is unable to do so, neither does the evidence establish that he is able to satisfy the judgment debt together with any associated costs liability, in full. The evidence concerning the availability of funding is directed to the conduct of the present application and to costs consequences. Prior to trial, the Second Defendant's legal representation ceased as funding was no longer available.²¹ The evidence now establishes that funding has subsequently become available for the purposes of this application and to meet any costs thrown away if the judgment is set aside.²² It does not, however, establish that funding is available to satisfy the judgment debt and associated costs in full. I accept there is force in the Plaintiff's submission that some of the prejudice relied upon by the Second Defendant could potentially be avoided by satisfaction of the judgment debt. However, the evidence does not establish that the Second Defendant presently has the ability to satisfy the judgment debt and associated costs in full. Moreover, the evidence does not establish that payment into Court is a realistic alternative.

[17] In the circumstances, whilst the Plaintiff's submission reduces the weight to be given to the consequences of bankruptcy enforcement relied upon by the Second Defendant, I do not regard it as fully displacing their significance

21 Affidavit of Simon Langdon Peat made 1 September 2026 at [14(e)]-[14(f)].

22 Ibid at [16(b)], [22]-[24], [36]-[37].

for the purposes of the present application. I am therefore unable to conclude that payment of the judgment debt is a presently available alternative which removes the prejudice relied upon by the Second Defendant. The indication given at the hearing that the Second Defendant would be prepared to pay into Court an amount in the order of \$20,000 in respect of costs thrown away does not support an inference that he is presently able to satisfy a judgment debt of approximately \$384,000 together with costs.

[18] I accept that the burden rests with the Second Defendant to establish a proper basis for the grant of a stay. That is to say that it is not incumbent on the Plaintiff to demonstrate prejudice as a precondition to resisting the application. However, once a basis for the grant of a stay is established, the Court must assess where the balance of convenience and the interests of justice lie. That exercise necessarily requires consideration of the prejudice which may be suffered by both parties if a stay is granted and if it is refused. The absence, or a lesser degree, of demonstrated prejudice to the Plaintiff is therefore not determinative but it remains a relevant consideration in weighing the competing positions of the parties.

[19] In considering where the balance of convenience lies, I take into account the prejudice identified by the Plaintiff.²³ I accept the Plaintiff's submission that the proceedings have been on foot for a considerable period, that

23 Submissions filed by Plaintiff on 10 September 2026 at [24], [31]-[33].

judgment has now been obtained, and that a successful litigant is ordinarily entitled to the fruits of its judgment and to finality in litigation. I also accept that any stay will necessarily postpone enforcement. However, the present stay is sought only for the limited period required for determination of the application under r 49.02 of the Rules. Further, the judgment continues to bear interest, and the Plaintiff will continue to be compensated, at least in part, for the deferred receipt of the judgment debt. Beyond delay in enforcement and the loss (for a time) of the immediate benefit of the judgment, no additional prejudice has been identified. There is no evidence before me of any deterioration in the Plaintiff's position, any increasing difficulty in recovery under the judgment or any other circumstance suggesting that postponement of enforcement for the limited period necessary to determine the application under r 49.02 of the Rules will materially prejudice the Plaintiff's interests.

[20] I have also considered whether there is any demonstrated risk of asset dissipation which might weigh against the grant of a stay. The Plaintiff submits that the Second Defendant has adduced no evidence concerning his asset position and that any stay should therefore be conditioned upon payment of the judgment sum into Court.²⁴ Whilst it is true that the Second Defendant has not provided detailed evidence of his assets, there is equally no evidence before me that assets have been dissipated, that there is a real risk they will be dissipated or that the Plaintiff's prospects of recovery are

24 Submissions filed by Plaintiff on 10 September 2026 at [31]-[33].

likely to be materially diminished during the relatively short period required for determination of the application under r 49.02 of the Rules. In those circumstances, I am not persuaded that there is any demonstrated risk of asset dissipation sufficient to justify refusing a stay or requiring payment of the judgment sum into Court as a condition of relief.

[21] I also take into account that the Second Defendant has indicated a willingness to provide undertakings directed to preserving the position pending determination of the application, including an undertaking not to sell, dispose of, encumber or otherwise deal with assets other than in the ordinary course of living expenses and the payment of reasonable legal costs.²⁵

[22] The Plaintiff submitted that if a stay is granted, it should only be granted upon the condition that the judgment sum be paid into Court. I do not accept that submission. In the circumstances, the condition proposed by the Plaintiff would, as a practical matter, come close to requiring satisfaction of the judgment before the application to set it aside has been determined. On the present evidence, I am not persuaded that such a condition is necessary or proportionate.

[23] In my view, the undertakings offered by the Second Defendant, coupled with liberty to apply and an expedited timetable for determination of the

²⁵ Affidavit of Jonathan Guy Joseph made 9 September 2026 at [7]-[14], annexure 'JGJ-1'.

substantive application, provide a more appropriate means of protecting the Plaintiff's position in the interim.

Disposition

[24] Weighing all relevant considerations together, I am satisfied that a stay should be granted.

[25] To the extent that special circumstances are required, I am satisfied they are present through the combination of the prompt commencement of the application; the existence of a bona fide and arguable challenge to the judgment; the potentially significant consequences of immediate bankruptcy enforcement; and the fact that the prejudice to the Plaintiff arising from delayed enforcement is, in all of the circumstances, outweighed by the prejudice identified by the Second Defendant. The latter basis is satisfied particularly so when regard is had to the undertakings offered by the Second Defendant and the expedited timetable proposed for determination of the substantive application which, in my opinion, constitutes a sufficient basis for the exercise of the discretion.

[26] I am of the view that the balance of convenience favours preserving the practical utility of the pending application under r 49.02 of the Rules until that application can be heard and determined.

[27] Nothing in these reasons should be taken as expressing any view concerning the ultimate disposition of the application to set aside the judgment.

Orders

[28] Noting that at the hearing I had made programming orders listing the application on 8 December 2026, I make the following orders:

1. Pursuant to r 66.16 of the Rules, execution of the judgment of Huntingford J, including Orders 1 and 2 made on 18 August 2026, is stayed pending further Court order.
2. While Order 1 above remains in force, the Plaintiff is to take no step toward enforcing the judgment of Huntingford J, including by the issue, or causing to be issued, a bankruptcy notice founded upon it.
3. Within 7 days of the delivery of these Reasons, the Second Defendant is to provide to the Court an undertaking in writing that, pending determination of the application under r 49.02 of the Rules, he will not sell, dispose of, encumber or otherwise deal with his assets other than for ordinary living expenses and legal costs without a Court order.
4. The parties have liberty to apply on 48 hours' notice, including to vary or discharge Order 1 herein.
5. Costs are reserved.
