

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2012] NZEmpC 14
ARC 54/11**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER OF an application for extension of time

BETWEEN WILSON KIM
Plaintiff

AND THERMOSASH COMMERCIAL
LIMITED
Defendant

Hearing: 3 February 2012
(Heard at Auckland)

Counsel: Plaintiff in person
J Douglas, counsel for defendant

Judgment: 7 February 2012

INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] Mr Kim has applied for an extension of time for filing an amended statement of claim. An amended statement of claim was to have been filed by 11 January 2012 in compliance with the timetabling orders contained in my previous judgment of 14 December 2011.¹

[2] Mr Kim's application is advanced on two grounds. Firstly, he says that he requires additional time to prepare an amended statement of claim because he has had difficulties instructing a lawyer over the holiday period. Secondly, he says that he requires the assistance of his son, who has been in China and has accordingly been unavailable.

¹ [2011] NZEmpC 169.

[3] The application is opposed. Counsel for the defendant submits that Mr Kim has had a sufficient opportunity to file amended pleadings. Counsel points to the fact that he has previously been advised of the desirability of engaging a lawyer (and of deficiencies with his claim) and has failed, until now, to take steps to seek representation. It is on this basis that counsel submits that Mr Kim's application ought to be declined.

[4] While counsel for the defendant was content for the matter to be dealt with on the papers, Mr Kim wished to be heard further. I convened a telephone conference and heard from both parties in relation to the application.

[5] While I have some considerable sympathy for the concerns identified by the defendant in relation to the history of these proceedings, most notably that the plaintiff has had ample opportunity to seek and obtain legal advice in respect of his pleadings (this issue having been canvassed during a number of earlier telephone conferences), I accept that the holiday season has intervened and has presented some difficulties for Mr Kim. I also have regard to the fact that there is no suggestion that an extension of time would prejudice the defendant in any way.

[6] Having weighed the competing considerations, I consider that it is in the overall interests of justice that the application be granted. This is, however, an indulgence for Mr Kim and not one that he should expect will be readily repeated.

[7] Mr Kim confirmed, during today's telephone conference, that he has spoken to a lawyer and that she is in a position to work on Mr Kim's claim immediately. Mr Kim confirmed that an amended statement of claim, that complies with the necessary requirements outlined in the judgment of 14 December 2011, will be filed and served within the timeframe set out in his application - namely 21 February 2012.

[8] The application is granted. Mr Kim is to file and serve an amended statement of claim by 4pm on 21 February 2012. A further telephone conference will be convened shortly thereafter to discuss any outstanding issues. The defendant is to have the usual time for filing a statement of defence.

[9] Costs are reserved.

Christina Inglis
Judge

Judgment signed at 10.30am on 7 February 2012