

**IN THE EMPLOYMENT COURT
CHRISTCHURCH**

**[2013] NZEmpC 199
CRC 42/13**

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

AND IN THE MATTER of an application for leave to file a
statement of defence and cross-challenge
out of time

BETWEEN SEALORD GROUP LIMITED
Plaintiff

AND AARON PICKERING
Defendant

Hearing: On the papers filed by way of memoranda filed on 14 and
30 October 2013

Appearances: Peter Kiely, counsel for plaintiff
Anjela Sharma, counsel for defendant

Judgment: 4 November 2013

INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] This judgment deals with an application for leave to file a statement of defence and cross-challenge out of time. The plaintiff neither consents to, nor opposes, the application and is content to abide the decision of the Court.

[2] Regulation 19(2)(a) of the Employment Court Regulations 2000 (the Regulations) provides that a defendant must file a statement of defence within 30 clear days after the date of service of the statement of claim. The statement of claim was served on counsel for the defendant on 9 September 2013. Thirty clear days from the date of service ended on 9 October 2013. Regulation 19(4) of the Regulations states that:

Every defendant who fails to comply with subclauses (1) to (3) may defend the proceedings only with the leave of the court.

[3] While the defendant sought to file a statement of defence on 10 October 2013, the plaintiff raised an objection the same day. The application for leave followed.

[4] I pause to note that the documentation filed in support of the application refers to a conversation between counsel on 9 October 2013, and a concern that counsel for the plaintiff did not raise any objection as to timeliness at that time. The first point is that as at 9 October 2013 the statement of defence was not out of time. The second point is that the timeframes for filing are imposed under the Regulations and it is not for the parties to agree or otherwise to filing out of time. If out of time an appropriate application must be advanced seeking leave of the Court. That requirement cannot be waived by counsel. The plaintiff cannot be criticised for raising the issue of timeliness when it became aware of it, to enable the defendant to take the necessary steps to seek leave.

[5] An affidavit has been filed in support of the application which (briefly) sets out the reasons for delay. It is apparent that the delay was caused by a miscalculation on counsel's behalf.

[6] The delay was minor and the result of an inadvertent error rather than tardiness by the defendant. The application was filed shortly after the delay had been brought to counsel's attention. There is no suggestion that the plaintiff is prejudiced by the brief delay in filing.

[7] Overall, I am satisfied that it is in the interests of justice that leave be granted. The application is accordingly granted. The statement of defence and cross-challenge must be filed and served within five working days from the date of this judgment.

[8] The plaintiff is entitled to costs on the application, the quantum of which will be reserved for later determination.

Christina Inglis
Judge

Judgment signed at 12.15 pm on 4 November 2013