

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2014] NZEmpC 151
ARC 39/13**

IN THE MATTER OF an application for leave to challenge out of
time

BETWEEN MIA NATHAN-JOYCE
Applicant

AND SILVEROAKS GROUP LIMITED (IN
RECEIVERSHIP)
Respondent

Judgment: 18 August 2014

JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] The applicant's application for leave to challenge out of time is dismissed for want of prosecution in the following circumstances.

[2] Although Mia Nathan-Joyce is now known as Mia Larsen-Joyce, there has been no formal change to her name in the proceeding and I will continue to refer to her as Ms Nathan-Joyce.

[3] By a determination issued on 1 May 2013,¹ the Employment Relations Authority dismissed Ms Nathan-Joyce's claims of underpayment in employment and unjustified dismissal. On 6 June 2013 Ms Nathan-Joyce applied for leave to challenge the Authority's determination after the expiry of the 28 day period within which she was entitled to do so.

[4] On 25 July 2013 by Minute, the Court pointed out the inadequacy of Ms Nathan-Joyce papers and recommended strongly that she obtain professional advice and perhaps also representation. Ms Nathan-Joyce was given the period of 21 days

¹ *Nathan-Joyce v Silver Oaks Group Limited (In Receivership)* [2013] NZERA Auckland 157.

within which to file and serve compliant proceedings including a draft statement of claim meeting the requirements of reg 11 of the Employment Court Regulations 2000.

[5] The applicant filed an amended statement of claim on 15 August 2013.

[6] On 16 August 2013 the Court issued a further Minute indicating that although the draft amended statement of claim contained more information than the original had, it still did not comply with reg 11. The advice that the Court then had was that Ms Nathan-Joyce had applied for legal aid. The Court directed that in these circumstances it would wait, although not for an unlimited period, for advice of the grant or otherwise of legal aid. The Court postponed any requirement for the respondent to respond to the pleadings at that point.

[7] Because no progress had been made at all by mid-February 2014, by Minute dated 11 February 2014 the Court asked that the lawyer who appeared to be advising Ms Nathan-Joyce (although not formally instructed by her in the proceeding) to update the Registry on the status and progress of Ms Nathan-Joyce's application for legal aid. The lawyer's advice was sought within 14 days.

[8] On 11 March 2014 the Court received a memorandum from the plaintiff's lawyer dated 10 March 2014. Counsel disclosed that she had been unable to certify to the legal aid authorities that there were good prospects of success on the challenge, especially in view of the respondent's financial position, and advised the Court that counsel would be recommending to Ms Nathan-Joyce that she discontinue her proceedings.

[9] The Court issued a further Minute on 12 March 2014 giving the applicant the period of 21 days within which to elect either to discontinue the proceedings or to take a further step consonant with their continuation.

[10] On 8 July 2014 the Court Registry spoke with Ms Nathan-Joyce's lawyer about the applicant's repeated assurances that she would file a notice of discontinuance. The Registry also wrote to the applicant herself on 19 June 2014

after Ms Nathan-Joyce had indicated that she wished to wait for potential legislative change affecting her challenge. The nature and effect of this was not explained.

[11] The Court issued a further Minute dated 31 July 2014 giving the applicant one last opportunity to take a step to prosecute her challenge and indicated that if she did not do so, it would be dismissed for want of prosecution. The Court's Minute made it clear that this was an 'unless' direction and explained the effect of this if no step was taken within the following 14 days. Directions for the service of the Minute were given, including to the applicant at her address for service, at her last known email address, and to her solicitor.

[12] No step has been taken by the applicant following the 'unless' order, the time for compliance with which is now well past.

[13] In these circumstances, the challenge is dismissed for want of prosecution. There will be no orders for costs on the plaintiff's application for leave to challenge out of time.

GL Colgan
Chief Judge

Judgment signed at 12.15 pm on Monday 18 August 2014