

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2020] NZEmpC 11
EMPC 120/2019**

IN THE MATTER OF	an application under ss 138(6) and 140(6) of the Employment Relations Act 2000
AND IN THE MATTER	of an application for leave to defend the proceeding
BETWEEN	MAREE COOPER Plaintiff
AND	PHOENIX PUBLISHING LIMITED Defendant

Hearing:	On the papers
Appearances:	G Ogilvie, advocate for plaintiff No appearance for defendant
Judgment:	21 February 2020

**INTERLOCUTORY (NO 2) JUDGMENT OF JUDGE K G SMITH
(Application for leave to defend the proceeding)**

[1] On 19 December 2019 Phoenix Publishing Ltd applied for leave to defend this proceeding. Leave was required because the company had not filed a statement of defence on time.

[2] Filing that application caused the adjournment of a formal proof hearing that had been scheduled to be conducted that day. Subsequently, the company was directed to serve its application on Ms Cooper. For reasons which it has not explained, that very simple procedural step has not been taken. Ms Cooper is represented in this

proceeding by Mr Ogilvie, who provided an address for service, so serving the application is straightforward.

[3] A telephone directions conference was convened on 14 February 2020 to deal with this application for leave. The conference was scheduled because it had come to the attention of Registry staff that the application had not been served.

[4] The company did not appear at the conference despite having been advised of its date and time. Efforts by the Registrar to locate its Director, Ms Rawson, that morning were unsuccessful. I am satisfied the company knew about the conference but did not make any arrangements to participate or request that it be held on another day.

[5] The conference proceeded in the absence of a company representative. The result was a minute giving the company a further opportunity to serve the application and directing that step be taken no later than 4 pm on 19 February 2020. It was to report having done so to the Registrar within the same time. Given the very basic step required that timeframe was generous.

[6] Despite those directions, and the passage of time since the application was filed on 19 December 2019, the application has still not been served. The company was on notice of the potential consequences of further delay. In the minute sent to the company on 14 February 2020 it was advised that if steps were not taken it assumed a substantial risk that the application might be struck out for want of prosecution.

[7] I am satisfied that the proceeding is not being prosecuted diligently. Phoenix Publishing's application seeking leave to defend the proceeding by Ms Cooper is struck out.

[8] Costs are reserved.

K G Smith
Judge

Judgment signed at 2.15 pm on 21 February 2020