

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

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2022] NZEmpC 121
EMPC 91/2022**

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

AND IN THE MATTER OF an application to extend time for filing a
notice of opposition

BETWEEN WARISSARA MATAJOD
Plaintiff

AND CRAZY HORSE LIMITED
Defendant

Hearing: On the papers

Appearances: M Prattley, counsel for plaintiff
J Hobcraft, counsel for defendant

Judgment: 8 July 2022

**INTERLOCUTORY JUDGMENT OF
CHIEF JUDGE CHRISTINA INGLIS
(Application to extend time for filing a notice of opposition)**

[1] The plaintiff has filed a challenge to a substantive determination of the Employment Relations Authority. The defendant wishes to cross challenge the determination but is required to seek leave because of the timeframes involved. The defendant also wishes to defend the plaintiff's challenge but did not file a statement of defence within the applicable timeframes. Leave is now required to defend the claim, and an application to enable that to occur has been filed. That application is opposed by the plaintiff. In addition, the plaintiff has filed an application for security for costs against the defendant. The defendant wishes to oppose the application, but the plaintiff

contends that it has failed to file a notice of opposition within time and that leave is accordingly required. An application for leave has now been filed, which is opposed by the plaintiff. It is against this convoluted procedural background that the latter application arises for determination.

[2] I issued a direction noting that the application for leave would need to be dealt with promptly and that I was proposing to deal with it on the papers. I proceed on that basis.

[3] The first issue is whether leave is required. Counsel for the defendant suggests it is not required, relying on the default timeframes for notices of opposition provided for in r 7.24(1)(a) of the High Court Rules 2016.

[4] Default timeframes contained within the High Court Rules do not override express orders of the Court relating to when documents are to be filed. Timetabling orders were made for the filing of a notice of opposition to the plaintiff's application for security for costs following a directions conference on 13 June 2022. During that conference counsel agreed that a one-week timeframe for filing and serving a notice of opposition was appropriate. Orders were made accordingly and were formally recorded in a minute dated 14 June 2022. The one-week timeframe was the applicable timeframe for filing and ought to have been complied with; it was not, so leave is necessary.

[5] The second issue is whether leave ought to be granted. The Court has a broad discretion: the overriding factor is the interests of justice. The factors generally taken into account are well known and include the length of the delay, the reasons for the delay, the conduct of the parties, any prejudice or hardship to the respondent and the significance of the issues raised by the proceedings both to the parties and more generally.¹

[6] The delay in this case is brief, namely two days. The reasons for the delay are explained in an affidavit filed in support of the application by the defendant company's

¹ *Almond v Read* [2017] NZSC 80 [2017] 1 NZLR 801 at [38].

director, namely staff shortages leading to an inability to get away from the restaurant to affirm his affidavit. Counsel for the plaintiff submits that the defendant's explanation lacks credibility and must, in any event, be weighed in light of the defendant's persistent failure to comply with statutory and directed timeframes in the Authority, which has caused significant cost and stress to the plaintiff.²

[7] There is some strength in the submission that the explanation for the delay needs to be approached with a degree of caution, having regard to the history of late filing that has already arisen in these proceedings.

[8] I accept that the delay is adversely impacting the plaintiff, as confirmed in her affidavit dated 28 June 2022. However, it is also necessary to factor in the prejudice that the defendant would suffer if leave was not granted – namely the ability to oppose the plaintiff's application for security for costs.

[9] I do not consider that it would be consistent with the overall interests of justice to proceed to determine the application for security for costs without hearing from the defendant, despite the factors that would otherwise weigh against the grant of leave. The parties' competing interests and the short delay in filing persuade me that leave ought to be granted. The notice of opposition is to be treated as having been filed.

[10] Costs are reserved. I record that although I have found in the defendant's favour on this application, this is not an occasion on which I consider that costs ought to follow the event.

Christina Inglis
Chief Judge

Judgment signed at 10.10 am on 8 July 2022

² The defendant relied on *Kiwi Ink Construction Ltd v Hughes* [2018] NZEmpC 124 at [11]; however, in that case the application was three months late, and the applicant acknowledged that it had ignored the Authority's determination.