

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

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

**[2023] NZEmpC 77
EMPC 52/2022**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for judgment by default against the defendant
AND IN THE MATTER OF	an application for strike out
BETWEEN	ALLAN HALSE First Plaintiff
AND	CULTURES SAFE NEW ZEALAND LIMITED (IN LIQUIDATION) Second Plaintiff
AND	HAMILTON CITY COUNCIL Defendant

Hearing: On the papers

Appearances: A Halse, plaintiff in person
No appearance for CultureSafe NZ Ltd (in liquidation)
M Hammond, counsel for defendant

Judgment: 26 May 2023

**INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN
(An application for judgment by default against the defendant
and an application for strike out)**

[1] This judgment resolves an application by the first plaintiff, Mr Halse, for judgment by default against the defendant, the Hamilton City Council. The

application is made on the ground that the Hamilton City Council has failed to file a statement of claim.

[2] For the reasons explained, Mr Halse’s application is dismissed. It could have been struck out.

Mr Halse challenges a determination of the Authority

[3] Mr Halse is dissatisfied with a determination of the Employment Relations Authority (the Authority).¹ He has challenged that determination. That challenge was commenced by Mr Halse filing a statement of claim. The Hamilton City Council responded by filing a statement of defence.

[4] In a directions conference convened after the pleadings were filed, timetabling was discussed with Mr Halse and counsel for the Hamilton City Council. The parties agreed, and the Court directed that the Hamilton City Council would present its case first. A timetable for filing evidence was put in place. The Hamilton City Council was to file and serve its evidence first, and to do so by Monday 20 May 2022; Mr Halse was to file and serve his evidence by Monday 18 July 2022.

[5] The Hamilton City Council filed and served its evidence on 20 May 2022, in accordance with that timetable. On 8 February 2023, Mr Halse provided his evidence to the Court and to the Hamilton City Council.²

[6] This application was foreshadowed in a memorandum filed by Mr Halse on 24 January 2023. At a directions conference on 28 March 2023, the Court referred Mr Halse to s 179 of the Employment Relations Act 2000 (the Act) and reg 7 of the Employment Court Regulations 2000 (the Regulations).

[7] Mr Halse filed this application on 17 April 2023. His application does not refer to the legislation but says that the de novo challenge is a “fresh hearing” process which requires the Hamilton City Council to file a fresh pleading. Mr Halse acknowledges

¹ *Hamilton City Council Ltd v Halse* [2022] NZERA 34 (Member Ryan).

² Several extensions were granted to Mr Halse, but his evidence was provided beyond the date then prescribed. Ultimately, the Hamilton City Council consented to the late filing and Mr Halse’s evidence was accepted.

that the Hamilton City Council has filed a statement of defence and evidence, but nevertheless says no “fresh pleadings” have been filed that he can respond to, or on which the Court can base a judgment. He says the process being followed is inequitable and unjust.

The Hamilton City Council applied to strike out the application

[8] The Hamilton City Council then filed an application to strike out Mr Halse’s application for judgment by default. It says there is no reasonable or legal basis for Mr Halse’s application, and that the application is an abuse of the process of the Court. It points to the legislation and says it is not the responsibility of the Hamilton City Council, as defendant, to file a statement of claim to Mr Halse’s challenge. In opposing the application to strike out, Mr Halse adopts the same arguments as in his application for judgment by default, and also says that “the Court does not have jurisdiction to entertain an application for summary judgment”.

[9] At a directions conference on 1 May 2023, convened to timetable both applications, the Court proposed, and the parties agreed, that the application to strike out would not be considered separately; the applications would be considered together.

The Act and Regulations prescribe the procedures of the Court

[10] The Employment Court is a creature of statute. It is bound by the Act and by regulations made under the Act.

[11] The Act and the Regulations set out a procedure to be followed when a party wishes to challenge a determination of the Authority. That procedure applies whether the dissatisfied party was an applicant or a respondent before the Authority.

[12] Section 179 relevantly provides:

179 Challenges to determinations of Authority

- (1) A party to a matter before the Authority who is dissatisfied with a written determination of the Authority under section 174A(2), 174B(2), 174C(3), or 174D(2) (or any part of that determination) may elect to have the matter heard by the court.
- (2) An election under subsection (1) must be made in the prescribed manner and within 28 days after the date of the determination.

[13] The requirements for commencing a challenge are prescribed by reg 7, which relevantly provides:

7 Challenges to determinations of Authority

- (1) An election under section 179 of the Act is made by filing with the Registrar of the court, within the time prescribed by section 179(2) of the Act, 3 copies of a statement of claim in form 1.

[14] Form 1 is the standard form statement of claim (election to have matter heard in the Employment Court). It is the form Mr Halse used when he filed his challenge.

[15] Regulation 19 then requires a defendant who wishes to defend the claim to file a statement of defence within 30 days of receipt of the statement of claim. The Hamilton City Council complied with this regulation.

[16] There is nothing in the Act or in the Regulations that requires a defendant to file a statement of claim.

[17] Because the Act and Regulations provide a procedure to be followed, the Court has no recourse to the High Court Rules 2016 under reg 6 of the Regulations. In any event, the procedure claimed by Mr Halse is not provided for in those rules. Rather, judgment by default may be available to a plaintiff if a defendant does not file and serve a statement of defence.³

The prescribed procedure has been followed

[18] The procedure set out in the Act and Regulations has been followed in this case. Mr Halse's application for judgment by default is dismissed.

[19] For completeness, I also consider whether the application could have been struck out.

³ High Court Rules 2016, pt 15 subpart 2.

The Court is able to strike out proceedings

[20] The Court does not have jurisdiction to entertain an application for summary judgment,⁴ being a proceeding which, in the High Court, is provided for in pt 12 of the High Court Rules. It does, however, via reg 6 of its Regulations, have a discretion to strike out all or part of a pleading under r 15.1, in pt 15 of the High Court Rules, if the pleading:

- (a) discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or
- (b) is likely to cause prejudice or delay; or
- (c) is frivolous or vexatious; or
- (d) is otherwise an abuse of the process of the court.

[21] The principles applying to an application to strike out are well settled and apply in the Employment Court.⁵ The pleaded allegations of facts, whether admitted or not, are assumed to be true. The jurisdiction to strike out on the ground that it discloses no reasonably arguable cause of action is to be exercised sparingly, and only in clearly untenable cases.⁶ Special caution is required where a claim involves a developing area of the law.⁷

[22] For the reasons already given, the application for judgment by default was clearly untenable; it was not reasonably arguable. For that reason, the threshold for striking out Mr Halse's application has been reached; it could have been struck out.

The Hamilton City Council entitled to costs

[23] As the successful party, the Hamilton City Council is entitled to costs on this application. If they cannot be agreed between the parties, the Hamilton City Council may apply to the Court by memorandum filed and served within 20 working days of this judgment. Mr Halse may respond by memorandum filed and served within a

⁴ Employment Relations Act 2000, s 187(2).

⁵ *New Zealand Fire Service Commission v New Zealand Professional Firefighters' Union Inc* [2005] ERNZ 1053 (CA) at [13].

⁶ *Attorney-General v Prince and Gardner* [1998] 1 NZLR 262 (CA) at 267.

⁷ *Couch v Attorney-General* [2008] NZSC 45, [2008] 3 NZLR 725 at [33].

further 15 working days, with the Hamilton City Council entitled to file and serve a memorandum in reply within a further five working days. Costs will then be determined on the papers.

Substantive challenge should now proceed

[24] The substantive challenge has been delayed by the application for judgment by default. An amended timetable to progress the challenge to a hearing is:

- (a) If Mr Halse wishes to prepare a separate bundle of documents, that is to be filed and served by 4 pm on Friday 16 June 2023.
- (b) Submissions from the Hamilton City Council, including the Hamilton City Council's chronology of key events are to be filed and served by 4 pm on Friday 23 June 2023.
- (c) Mr Halse's submissions, including a chronology of key events from his perspective, are to be filed and served by 4 pm on Friday 21 July 2023.
- (d) The hearing will be set down for two days, in Hamilton, by the Registrar in consultation with the parties.

J C Holden
Judge

Judgment signed at 3.35 pm on 26 May 2023