

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

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

**[2023] NZEmpC 93
EMPC 425/2021**

IN THE MATTER OF an application for judicial review

AND IN THE MATTER OF an application to strike out proceedings

AND IN THE MATTER OF an application for leave to file further
submissions

BETWEEN ALLAN GEOFFREY HALSE
Applicant

AND EMPLOYMENT RELATIONS
AUTHORITY
First Respondent

AND NEW PROGRESS ENTERPRISE
CHARITABLE TRUST OPERATING AS
PROGRESS TO HEALTH
Second Respondent

AND CULTURES SAFE NEW ZEALAND
LIMITED (IN LIQUIDATION)
Third Respondent

Hearing: On the papers

Appearances: Applicant in person
No appearance for first respondent
K McLuskie, counsel for second respondent
No appearance for third respondent

Judgment: 20 June 2023

**INTERLOCUTORY JUDGMENT (NO 3) OF JUDGE KATHRYN BECK
(Application for leave to file further submissions)**

Background

[1] These proceedings involve an application by Mr Halse for judicial review of a decision of the Employment Relations Authority to accept for filing a counterclaim by the second respondent against the applicant and its former employee in the Authority. The counterclaim involved a claim that the former employee breached the employment agreement and that the applicant, Mr Halse, and the third respondent had aided and abetted that breach.

[2] The second respondent applied to strike out the application for judicial review on various grounds. That application was heard on 13 April 2022 and is awaiting determination but had been paused pending consideration of Mr Halse's application for a stay of the strike-out application.

[3] On 4 April 2023, the Court declined that application,¹ leaving the strike-out application to be determined.

[4] On 4 May 2023, Mr Halse filed an application for leave to file further submissions in opposition to the second respondent's strike-out application.

[5] Following a directions conference held on 15 May 2023, the parties agreed that Mr Halse's application for leave to file further submissions could be dealt with on the papers, and a timetable was set for the filing of submissions in support of and in opposition to that application.

Legal principles

[6] The Employment Court's practice directions outline the Court's approach to final submissions. Practice direction four states:²

¹ *Halse v Employment Relations Authority* [2023] NZEmpC 53.

² "Employment Court of New Zealand: Practice Directions" <www.employmentcourt.govt.nz> at No 4.

4. Final submissions at hearing

- 1) Except in exceptional circumstances, for which the leave of the Court will be required, parties' final submissions in all cases will be given to the Court immediately following the conclusion of evidence or otherwise at the closure of the parties' cases.

...

[7] Therefore, the issue to be considered is whether exceptional circumstances exist that would justify a departure from the normal rule that final submissions be given immediately following the end of the hearing.

Analysis

[8] The submissions made by Mr Halse do not identify any exceptional circumstances. Instead, he merely outlines the submissions that he seeks leave to make. However, in fairness to Mr Halse, I will briefly consider the issues raised by the submissions to determine whether there are in fact exceptional circumstances.

[9] The first submission which Mr Halse seeks to make is that the Employment Relations Authority, as first respondent to the judicial review proceedings, was required to file a statement of defence under s 10 of the Judicial Review Procedure Act 2016. However, this submission is not new, and I already intended to address it in my judgment. Therefore, I decline to accept further submissions on this issue.

[10] The second submission which Mr Halse seeks to make is that the second respondent, Progress to Health, does not have legal standing to defend in the judicial review proceeding. However, as with the first submission, I already intended to address that issue in my judgment, so I decline to accept further submissions on that point also.

[11] The third submission which Mr Halse seeks to make is that the second respondent's strike-out application is in fact a claim for summary judgment. Section 187(2) of the Employment Relations Act 2000 states: "The court does not have jurisdiction to entertain an application for summary judgment." However, as Judge Shaw noted in *Fujitsu General New Zealand Ltd v Rochester*, there is a distinction between an application for summary judgment and an application to strike out all or

part of a pleading.³ Mr Halse has not reckoned with that distinction. Therefore, I am not persuaded that this proposed submission gives rise to any exceptional circumstances.

[12] For completeness, I observe that Mr Halse was given the opportunity to make further submissions at a prior stage in this proceeding. On 7 February 2023, I observed:⁴

[5] I had previously discussed with Mr Halse whether, rather than a stay of proceedings, he was in reality applying for leave to make further submissions and/or file further affidavit evidence in opposition to the application to strike out the proceedings. He advised that he considers the application for a stay to be the appropriate course of action and that he wishes to pursue that application. That remains his position.

[13] It is therefore surprising that leave has now finally been sought at this late stage in the process when additional delays will necessarily subject all parties involved, including Mr Halse's client in the Authority, to further delay.

Outcome

[14] Mr Halse has not identified any exceptional circumstances that would justify further submissions being filed, and I consider that it would be inequitable for such leave to be granted.

[15] Therefore, Mr Halse's application to file further submissions is declined.

Kathryn Beck
Judge

Judgment signed at 3.45 pm on 20 June 2023

³ *Fujitsu General New Zealand Ltd v Rochester EmpC* Wellington WC 14/03, 13 May 2003 at [38].

⁴ *Halse v Employment Relations Authority* [2023] NZEmpC 8 at [5].