

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

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

**[2024] NZEmpC 18
EMPC 9/2023**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application to extend time to file application for costs
BETWEEN	DE KAI LU First Plaintiff
AND	YUZHEN QIU Second Plaintiff
AND	REBECCA YOUNG Defendant

Hearing:	On the papers
Appearances:	First plaintiff in person and as agent for second plaintiff P Mathews, advocate for defendant
Judgment:	14 February 2024

**INTERLOCUTORY JUDGMENT (NO 2) OF JUDGE KATHRYN BECK
(Application to extend time to file application for costs)**

[1] In its judgment issued on 24 July 2023,¹ the Court declined the plaintiffs' application for stay of execution of orders made against them by the Employment Relations Authority in its determination;² and granted the defendant's application for security for costs. The judgment noted that, as the successful party, Ms Young was

¹ *Lu v Young* [2023] NZEmpC 111.

² *Young v Bourson Ltd* [2022] NZERA 648 (Member Craig).

entitled to costs.³ In the event the parties could not reach agreement on costs, the receipt of memoranda was timetabled.

[2] Costs could not be agreed, but neither party took any steps within the timeframe prescribed.

[3] The Registry followed up with Mr Mathews, advocate for Ms Young, about costs on 14 August 2023, the day a memorandum was due. He responded the next day, asking for an extension of time to file a memorandum on 17 August 2023 by consent.

[4] Mr Lu, the first plaintiff and agent for the second plaintiff, advised the Registry that he did not intend to pay the amount of security for costs ordered.⁴ He also advised that he did not consent to the late filing of the memorandum.

[5] Mr Mathews was advised by the registry that he would then need to file an application for leave to file a memorandum seeking costs on 16 August 2023. He did not do so until 21 November 2023, three months later.

[6] The explanation offered for the delay is that he was inattentive to the timetable and mistakenly thought costs would be reserved until the substantive matter was decided. Then, once this was drawn to his and Ms Young's attention, she was concerned not to incur further costs.

[7] Now that it is apparent the matter is not proceeding at all,⁵ Ms Young wants to pursue costs for the interlocutory applications.

[8] Mr Lu opposes the defendant's application for leave.

[9] He says he has attempted to resolve costs but has not heard from Ms Young's representative. He says the plaintiffs are willing to pay off the costs owing from the

³ *Lu v Young*, above n 1, at [32].

⁴ The substantive proceedings are therefore stayed; at [31].

⁵ Because of Mr Lu's advice that security will not be paid.

Authority but are still in financial difficulty and should not suffer further and have to pay for the defendant's mistake in not submitting a memorandum.

[10] The Court has jurisdiction to grant leave to extend the time to file documents where it is just and equitable to do so.⁶

[11] It seems a reason for the delay lies largely in the hands of Ms Young's representative. It is not in the interests of justice for her to be deprived of the opportunity to seek costs as a result.

[12] This is particularly so in circumstances where the proceedings are apparently not continuing. It is important that the costs issue be properly resolved after hearing from both parties, rather than by default.

[13] The arguments made by Mr Lu are more properly addressed to the issue of costs themselves, rather than to the issue of leave. He will be able to make such submissions and any other response to any memorandum filed by Ms Young.

[14] Accordingly, I consider it is in the interests of justice to grant the extension of time.

Outcome

[15] I make the following orders:

- (a) The defendant has leave to file a memorandum and apply for costs in relation to the applications for a stay and security for costs. She must do so within seven days of the date of this judgment.
- (b) The plaintiffs will then have 14 days to respond.

⁶ Employment Relations Act 2000, ss 189 and 221(c).

[16] A decision in relation to costs will then be made on the papers.

Kathryn Beck
Judge

Judgment signed at 3 pm on 14 February 2024