

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

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

**[2024] NZEmpC 89
EMPC 482/2023**

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 a statement of defence
BETWEEN	MICHAEL TAIA Plaintiff
AND	AKE INNOVATION LIMITED Defendant

Hearing: On the papers

Appearances: M Taia, plaintiff in person
S Franklin, counsel for the defendant

Judgment: 27 May 2024

**INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN
(Application to extend time to file a statement of defence)**

[1] Michael Taia filed a challenge to a determination of the Employment Relations Authority on 22 December 2023.¹ Ake Innovation Ltd was served with the proceedings at its registered office on 1 February 2024. No statement of defence was filed within time but after the Court contacted Stephen Franklin, the solicitor who acted for Ake Innovation in the Authority proceedings, an application for leave to extend the time to file the statement of defence was filed and served. The application was received by the Court on 5 April 2024.

¹ *Taia v Ake Innovation Ltd* [2023] NZERA 709 (Member Loftus).

[2] Mr Taia opposes an extension of time being granted. This judgment resolves the application.

[3] Briton Williams, a director and shareholder of Ake Innovation, has filed an affidavit in support of the application. He accepts that the proceedings were served at Ake Innovations' registered office, which is also his home address. He says he was unaware that proceedings had been served until Mr Franklin contacted him on 22 March 2024. He then made enquiries of his whānau and learned that his 14-year-old daughter had accepted some papers from what appears to have been a process server.

[4] Mr Williams acknowledges that he was aware from mid-January 2024 that Mr Taia had advised the Authority that he intended to challenge the determination, but says he understood that the challenge was on hold. This understanding was based on an email his solicitor was copied into from the Authority to Mr Taia on 12 January 2024 that read:²

Mr Taia, that the fact of the challenge means that rather than reserve the issue of costs pending the Employment Court outcome, the preferred option is to resolve the issue at least as far as the Authority is concerned – *Swales v AFFCO New Zealand Ltd* EmpC Auckland AC19/01, 23 March 2001 at [3]. While a Tribunal decision, it is a practice that has normally been followed in the years since.

[5] Mr Williams' understanding of that email was that, until the matter in the Authority was finished, Ake Innovation would not need to deal with any matter in the Court. Mr Williams accepts he was mistaken in that assumption. He says, however, that Ake Innovation never had any intention not to participate in the Court.

[6] Ake Innovation submits that overall justice merits an extension to the date for filing a statement of defence and that there has been little to no prejudice to Mr Taia in granting that extension.

² The case referred to in the Authority's email is a decision of the Employment Court, but refers to the practice of the Employment Tribunal: *Swales v AFFCO New Zealand Ltd* EMC Auckland AC 19/01, 23 March 2001.

[7] The grounds for Mr Taia's opposition to the application include that Mr Franklin is an experienced litigator and director of a large law firm and accordingly it would be inconceivable that he was not aware of the requirement to file a statement of defence by a particular time, and that various other communications prior to service would have put him on notice that a challenge had been filed. Mr Taia says that any issues that arose at the registered office of Ake Innovation are not his concern since the statement of claim was properly served. Mr Taia says further that Mr Williams has been, or is, a director and/or shareholder of numerous companies and businesses across many business sectors. He is an experienced businessperson. On that basis, Mr Taia does not accept there should be any latitude or excuse for Ake Innovations' failure to file its statement of defence within the time-

Leave granted

[8] The Court has jurisdiction to extend time within which a statement of defence may be filed.³

[9] In considering such an application, the Court's overarching concern is what the interests of justice require.⁴ In reaching its view as to where those interests fall, it will consider the reasons for any delay, the length of the delay, any prejudice and the potential impact on the rights and liabilities of the parties.⁵

[10] In the present circumstances, there was a delay of approximately five weeks before this application was made,⁶ which is not insignificant, but neither is it of particular moment to the progress of the proceedings.⁷ Mr Taia is not prejudiced by the delay. On the other hand, if the extension is not granted, Ake Innovation is precluded from defending itself against Mr Taia's challenge to a determination in which Ake Innovation was successful.

³ Employment Relations Act 2000, ss 219(i) and 221(c).

⁴ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38]; as applied by this Court, for example, in *P v A* [2017] NZEmpC 92, [2017] ERNZ 504.

⁵ See the discussion in *P v A*, above n 4, at [18]–[24]; and *Bay of Plenty District Health Board v CultureSafe NZ Ltd* [2019] NZEmpC 122 at [13]–[16]. These factors were also confirmed in *Almond v Read*, above n 4, at [38].

⁶ The timeframe for filing a statement of defence is 30 clear days after the date of service of the statement of claim: Employment Court Regulations 2000, reg 19(2)(a).

⁷ See *P v A*, above n 4, at [20]; and *An Employee v An Employer* [2007] ERNZ 295 (EmpC) at [17].

[11] While I accept the point made by Mr Taia that it is a matter for Ake Innovation where it has its registered office, I nevertheless accept that there were reasons for not appreciating the significance of the papers that had been delivered. Mr Taia is self-represented at this stage. If a professional representative had been engaged, as a matter of courtesy, they may have contacted Mr Franklin again following the service of the statement of claim, given they knew he was acting for Ake Innovation in the Authority matter. As it was, Mr Franklin did not know the challenge had been filed until he was contacted by the Court, at which time he acted promptly to take steps. I accept, therefore, that the omission to file and serve a statement of defence within 30 days was inadvertent.

[12] Standing back and applying the principles regarding extensions of time, I am satisfied that the interests of justice require an extension to be granted. A draft statement of defence has been provided to the Court.

[13] The statement of defence is to be finalised and filed and served within 10 working days of the date of this judgment. There then will be a further directions conference to progress this matter.

[14] While the application is successful, Ake Innovation has been granted an indulgence. Mr Taia is not represented. Accordingly, no order for costs is appropriate on this application.

J C Holden
Judge

Judgment signed at 11 am on 27 May 2024