

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

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

**[2025] NZEmpC 71  
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 dismiss proceedings

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:                    4 April 2025

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**JUDGMENT OF JUDGE KATHRYN BECK**

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[1] The plaintiffs in these proceedings have challenged a determination of the Authority.<sup>1</sup> On 24 July 2023, the Court granted an application by the defendant, Rebecca Young, for security for costs.<sup>2</sup> The plaintiffs have not paid the security for costs ordered, so the challenge has been stayed since July 2023. The defendant now applies for the Court to strike out that challenge on the basis that the plaintiffs have not pursued their challenge.

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<sup>1</sup> *Young v Bourson Ltd* [2022] NZERA 648 (Member Craig).

<sup>2</sup> *Lu v Young* [2023] NZEmpC 111.

[2] The defendant submitted that the plaintiffs no longer appear to be engaged in these proceedings and that they do not appear to intend to pursue them any further. It was submitted that the proceedings have caused her considerable stress as well as escalating costs. Further, it was noted that the amounts awarded to the defendant by the Authority have not been paid to her by the plaintiffs and that there is an increasing risk of the defendant's success in the Authority being rendered nugatory by escalating costs.

[3] The plaintiffs have indicated that they are not able to pay the security for costs ordered by the Court and that they therefore do not intend to pursue their challenge. They consent to the claim being struck out so long as no costs order is made against them.

### **Legal principles**

[4] Rule 15.2 of the High Court Rules provides:

#### **15.2 Dismissal for want of prosecution**

Any opposite party may apply to have all or part of a proceeding or counterclaim dismissed or stayed, and the court may make such order as it thinks just, if—

- (a) the plaintiff fails to prosecute all or part of the plaintiff's proceeding to trial and judgment; or
- (b) the defendant fails to prosecute all or part of the defendant's counterclaim to trial and judgment.

[5] A party seeking for a claim or counterclaim to be struck out for want of prosecution must show that there has been inordinate delay, that the delay is inexcusable and that the delay has caused prejudice to the other party. However, the decision to strike out is discretionary, and those considerations are not necessarily exclusive. The overriding consideration is whether justice can be done, despite the delay.<sup>3</sup>

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<sup>3</sup> *New Zealand Industrial Gases Ltd v Andersons Ltd* [1970] NZLR 58 (CA) at 61.

## **Analysis**

[6] I accept that there has been inordinate and inexcusable delay in the plaintiffs pursuing their challenge. A security for costs order was made in July 2023, and it is now April 2025. The plaintiffs have indicated that they are unable to pay the security ordered; however, I note that the Court only ordered security of \$3,100. Although the plaintiffs say they are impecunious, they were able to pay other money ordered by the Court during that period. I do not accept that their financial circumstances are a sufficient explanation for why the security has not been paid for almost two years.

[7] I also accept that the plaintiffs' delay in pursuing their challenge has caused prejudice to the defendant. The proceedings have caused stress to the defendant. They continue to hang over her head with escalating costs. If these proceedings are permitted to continue, there is a real risk that the defendant's success in the Authority will be rendered nugatory by her legal costs. Such an outcome would prevent justice from being done.

[8] I also note that the plaintiffs consent to the challenge being struck out on the basis that no costs are awarded. Although I do not intend to allow costs to lie where they fall, the plaintiffs' consent to the proceedings being struck out further indicates that they do not intend to pursue these proceedings.

[9] Therefore, I consider that the unexplained delay in the circumstances is sufficiently serious and has caused sufficient prejudice to the defendant as to warrant the plaintiffs' challenge being struck out.

## **Outcome**

[10] The plaintiffs' challenge to the Authority's determination is dismissed.

[11] The defendant is entitled to costs on this application and is also entitled to costs incurred in defending the substantive challenge. If the parties are unable to agree on the issue, the defendant will have 14 days from the date of this judgment within which to file and serve any memorandum and supporting material, with the plaintiffs having

a further 14 days within which to respond. Any reply should be filed within a further seven days.

Kathryn Beck  
Judge

Judgment signed at 2.30 pm on 4 April 2025