



- (c) an alleged failure by Sunlight to pay him the minimum wage rate; and
- (d) associated claims for penalties.

[2] It is apparent from the Authority's determination that the litigation stretched back to two periods of employment in 2017 and 2018 respectively.<sup>3</sup>

[3] Mr Wei's claims were unsuccessful.

[4] Mr Wei was dissatisfied with the determination and, on 17 July 2020, challenged it. The statement of claim he filed was very brief. He pleaded being employed by Sunlight, the hours he claimed to have worked and the wage rate he received, the absence of an employment agreement, that he was not provided with any public holiday leave or holiday pay, was not provided with annual leave or financial compensation and that he was dismissed in November 2018 without having done anything wrong. The pleadings were not amplified by further information to explain the basis of each claim.

[5] An amended statement of claim was filed in August 2020, but its changes were primarily directed towards monetary relief. Mr Wei sought wages claimed to be owing to him, holiday pay, annual leave and the amount he said that should have been paid to him as the tax component of his income, plus interest. He did not make a specific claim for remedies arising from the alleged personal grievance but there was a general request to provide any other relief the Court considered fit to grant.

[6] Not surprisingly, Sunlight defended the claim. It did not accept Mr Wei's premise, disputing his allegations that he was paid less than his legal entitlements, and raised as an issue that the personal grievance was resolved because that claim was dismissed by the Authority in a previous determination which was not challenged.

[7] On 30 November 2020, a judgment was issued dealing with interlocutory applications made by the parties.<sup>4</sup> Mr Wei sought a stay of execution of a

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<sup>3</sup> At [9].

<sup>4</sup> *Wei v Sunlight JMB Future Ltd* [2020] NZEmpC 208.

determination about costs the Authority issued following his unsuccessful claims.<sup>5</sup> Separately, Sunlight sought security for costs. Mr Wei's application was unsuccessful. Sunlight's application was successful. Mr Wei was ordered to pay or provide security for potential future costs of \$8,000 subject to certain conditions.<sup>6</sup> Those conditions included that the security was to be paid or provided no later than 4 pm on 25 January 2021 and, if that did not happen, the proceeding would be stayed until it was paid or provided.<sup>7</sup> Mr Wei did not pay the security or otherwise provide it.

[8] About 18 months later Sunlight applied for an unless order. It sought an order under r 7.48 of the High Court Rules 2016 that, unless Mr Wei paid or provided security, the proceeding would be struck out. That application was unsuccessful.<sup>8</sup>

[9] Sunlight has now applied to dismiss the proceeding for want of prosecution. The grounds of the application are straightforward and can be briefly stated. The proposition is that, almost from the beginning of the claim, Mr Wei has failed to prosecute it, he has not explained his delay, and the company is entitled to certainty and finality which follows from dismissing the proceeding.

[10] The application relied on reg 6 of the Employment Court Regulations 2000 and r 15.2 of the High Court Rules, as well as *Carrington Resort Jade LP v Maheno* and *A Ifraz Investments Ltd v Jamal*.<sup>9</sup>

[11] The application was accompanied by an affidavit from Harry Bei, who is a director of Sunlight. Mr Bei described Sunlight's business and Mr Wei's brief employment by the company. Mr Bei referred to the impact of this litigation on Sunlight, which is a small business owned by two families, and the cost that has been incurred while the proceeding has remained alive.

[12] Mr Wei opposed the application. A significant portion of his opposition was directed to the substantive issues, as he perceives them to be, arising from his

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<sup>5</sup> *Wei v Sunlight JMB Future Ltd* [2020] NZERA 282.

<sup>6</sup> *Wei*, above n 4, at [47].

<sup>7</sup> At [47](c)–(d).

<sup>8</sup> *Wei v Sunlight JMB Future Ltd* [2022] NZEmpC 55.

<sup>9</sup> *Carrington Resort Jade LP v Maheno* [2025] NZEmpC 29; and *A Ifraz Investments Ltd v Jamal* [2024] NZEmpC 174.

employment. Among the grounds he drew on are claims that certain named persons associated with the business lied about the events surrounding his employment and its cessation, that the Authority and the Court have been deceived and that there is no merit in the company's position.

[13] Before considering the submissions it is appropriate to note that, almost immediately after Sunlight's application was filed and served, Mr Wei paid to the Registrar of the Court the amount previously ordered as security. He borrowed that money and provided to the Court documents showing the private loan agreement made to obtain it.

### **The legal test**

[14] There is no dispute that, in appropriate cases, the Court has power to dismiss a proceeding for want of prosecution. The regulations require the Court to dispose of applications either as provided for in them or, in certain circumstances, as provided in the High Court Rules. In the absence of any provision in either of the regulations or those rules, an application is to be dealt with as the interests of justice require.

[15] The regulations do not address this subject. However, High Court Rule 15.2 does:

#### **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.

[16] In *Lovie v Medical Assurance Society New Zealand Ltd*, the power to dismiss a claim was described in the following way:<sup>10</sup>

...the applicant must show that the plaintiff has been guilty of inordinate delay, that such delay is inexcusable, and that it has seriously prejudiced the defendant. Although these considerations are not necessarily exclusive, and

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<sup>10</sup> *Lovie v Medical Assurance Society New Zealand Ltd* [1992] 2 NZLR 244 (HC), at 248.

at the end one must always stand back and have regard to the interests of justice, in this country, ever since *NZ Industrial Gases Ltd v Andersons Ltd* [1970] NZLR 58 it has been accepted that if the application is to be successful, the applicant must commence by proving the three factors listed.

[17] The power to dismiss a proceeding for want of prosecution is discretionary.<sup>11</sup>

*Inordinate delay?*

[18] What is considered to be inordinate delay depends on the circumstances of the case.<sup>12</sup> Usually, it is considered to be a period of time that has elapsed which is materially longer than the time usually regarded as acceptable.<sup>13</sup>

[19] Mr Fleming's submissions addressed this aspect of the application by referring to how long it took Mr Wei to pay the security for costs, which he calculated as four years, seven months and ten days. He submitted that this delay was inordinate and pointed out that Mr Wei was on notice that his case could be dismissed if payment was not made within a reasonable time. That submission was available because the 2022 judgment brought that possibility to Mr Wei's attention. It was said that, despite being on notice, Mr Wei did not seek leave to make payments by instalments, or in any way proactively explain the delay to the Court or to Sunlight. By comparison, two examples were given where the Court dismissed proceedings where the plaintiff's delay was much shorter. In *A Ilfraz Investments v Jamal*, the delay was one year.<sup>14</sup> In *Carrington Resort Jade LP v Maheno*, that delay was eight and a half months.<sup>15</sup>

[20] Mr Wei's response did not specifically address whether the delay could properly be described as inordinate. His attention was focussed on the substantive proceeding, his views about what motivated Sunlight and in criticising the company director's alleged conduct. Mr Wei did, however, produce some financial information which may have been intended to show that he has limited means, or at least may have had limited means during some part of the time that elapsed after he filed his claim.

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<sup>11</sup> *Mead v Day* [1985] 1 NZLR 100 (CA).

<sup>12</sup> *Allen v Sir Alfred McAlpine and Sons Ltd* [1968] 2 QB 229 (CA), at 268; and see the commentary in Jessica Gorman and others *McGechan on Procedure* (online ed, Thomson Reuters) at HR15.2.02.

<sup>13</sup> At 15.2.02; and see *Tabata v Hetherington* [1983] TLR 764 (CA).

<sup>14</sup> *A Ilfraz Investments v Jamal*, above n 9.

<sup>15</sup> *Carrington Resort Jade LP v Maheno*, above n 9.

If that was his intention, he did not explain the relevance of this information or its impact, if any, on his ability to pursue these claims to a hearing.

[21] On any view a delay of over four years is well beyond what could be regarded as acceptable.

[22] This delay was inordinate and that points towards granting the application.

*Was the delay inexcusable?*

[23] Mr Fleming submitted that Mr Wei has not provided any reasonable explanation for the delay and that what little was said by him was unsatisfactory. As previously mentioned, Mr Wei supplied some information which included:

- (a) Tax records for the year 1 April 2019 to 31 March 2020.
- (b) Tax records showing tax paid on investments for the year from 1 April 2023 to 31 March 2024.
- (c) A letter from the Ministry of Social Development about being granted a job-seeker support benefit from 9 October 2024.
- (d) A student loan statement as at 23 April 2025.

[24] Mr Fleming described some of the tax records as irrelevant, because they are for a time before the proceeding was filed. He criticised the absence of records for the three years from 1 April 2020 to 31 March 2023; that included two years after security was ordered. He also noted that the wording of the letter from the Ministry of Social Development implied that Mr Wei was not in receipt of a benefit before October 2024, during the period after security was ordered.

[25] Those submissions were designed to show that little or no weight could be placed on the financial information supplied by Mr Wei if that was intended to explain why the litigation had not progressed. Mr Fleming submitted that it was notable Mr Wei was able to pay the amount ordered as security within a few days of receiving

Sunlight's application, which raised an unanswered question about why that step was not taken any earlier.

[26] Mr Wei's submissions did not, either directly or indirectly, address whether the delay (which he did not dispute had occurred) in taking steps was excusable for some reason. The nearest his submissions came to addressing that subject was that he borrowed money to pay the security.

[27] I agree with Mr Fleming's submission that Mr Wei's delay is inexcusable. There is nothing in Mr Wei's response from which something might be gleaned to explain why more than four years went by without anything happening.

[28] This factor points toward granting the application.

*Prejudice to the defendant*

[29] I accept Mr Fleming's submission that there is prejudice to Sunlight because of the delay. Sunlight's ability to defend the claim is compromised by this passage of time. Mr Fleming referred to the company not having sophisticated systems for recording hours worked and wages paid but, instead, made handwritten entries in a notebook. It was said that there were no detailed business records and that Mr Wei refused to provide Sunlight with an IRD number and therefore no contemporaneous tax records relating to his employment exist.

[30] That information supported a submission that the ability to remember and give evidence about relevant events was dependant on locating other documents and the memories of witnesses. The point being made was that the events surrounding Mr Wei's claim are about eight years old and having to remember events that long ago presents difficulties which disadvantage the defendant.

[31] There is also the obvious prejudice arising from having to continue to defend the claim. That is, the claim has been hanging over Sunlight for several years and has resulted in cumulative (and ongoing) costs for the company.

[32] Mr Wei did not really address these issues. It is, perhaps, implicit in his comments that he is relying on the strength of his substantive claim to displace all of these considerations. If that is the approach he is taking, it is not persuasive. All that really does is demonstrate that at any substantive hearing there would be sharp disagreements between him and the company over what happened and why. If anything, that reinforces the point made by Mr Fleming about the difficulties arising when litigation is so long after the events which have given rise to them.

[33] This factor points towards granting the application.

*Overall interests of justice*

[34] The overall justice of the case points towards granting the application. That is a combination of the length of the delay, the delay being inexcusable, the impact on Sunlight, the public interest in proceedings being conducted as expeditiously as possible, and that the security was a reasonably modest sum.

[35] Standing back, consideration has to be given as to whether it might nevertheless be possible to do justice to the parties in this litigation even at this late stage. I am not persuaded that it would be just to carry on.

**Outcome**

[36] The application is successful and Mr Wei's claim is dismissed. It follows that the money paid by him to the Registrar as security for costs must be returned.

[37] Sunlight is entitled to the costs of this application. In the absence of agreement memoranda may be filed.

K G Smith  
Judge

Judgment signed at 2.40 pm on 12 February 2026