

**IN THE EMPLOYMENT COURT
CHRISTCHURCH**

**[2014] NZEmpC 191
EMPC 213/2014**

IN THE MATTER OF an application for leave to file a statement
of defence out of time

BETWEEN RICHARD & JENNIFER ADAMS t/a
UNTOUCHABLE HAIR & SKIN
Applicant

AND SHANNEN BROWN
Respondent

Hearing: (by documents filed on 23 September 2014 and 16 October
2014)

Counsel: T Stallard, counsel for the applicants
A Sharma, counsel for the respondent

Judgment: 20 October 2014

JUDGMENT OF JUDGE B A CORKILL

[1] On 31 July 2014, the Court issued a decision on the respondent's application for leave to file a cross-challenge out of time. That application was opposed. For the reasons given in the decision, an order was made that time would be extended for filing the statement of claim to a date which was seven days after the date of the judgment; the present applicants were directed to file and serve a statement of defence no later than 28 days after the judgment.¹

[2] Somewhat ironically, the applicants did not file a statement of defence in time, after being served with the statement of claim. This judgment deals with the application which has now been made for leave to file a statement of defence out of time; the application is based on a contention of inadvertent error. The application is not opposed; the respondent abides by the decision of the Court.

¹ *Brown v Adams t/a Untouchable Hair & Skin* [2014] NZEmpC 139 at [15]-[16].

[3] I do not propose to repeat the background circumstances, which are fully set out in my earlier judgment along with the relevant principles.

[4] As I have indicated, the Court's decision was dated 31 July. The statement of defence should have been filed and served by 29 August 2014. The interlocutory application for leave to file a statement of defence out of time was filed on 23 September 2014.

[5] It is submitted that the obligation to file the statement of defence within 28 days was "simply overlooked" by counsel.

[6] The applicants themselves should not be prejudiced in the present case by an error made by their counsel; and there is no assertion of prejudice to the respondent.

[7] An indulgence was granted to the respondent to file her cross-challenge out of time; the same indulgence is now granted to the applicants to file their statement of defence out of time.

[8] The formal orders of the Court are accordingly:

- a) Time for filing a statement of defence by the applicants is extended to a date which is seven days after the date of this judgment.
- b) Although costs usually follow the event, I adopt the course which I adopted with regard to the respondent's earlier application, where I ruled that because an indulgence had been granted to her, costs should lie where they fall; I make a like order in this case.²



B A Corkill

Judge

Judgment signed at 3.45 pm on 20 October 2014

² At [17].