

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA457/2024
[2025] NZCA 556

BETWEEN YAO WEI HE
 Applicant

AND ZHIXIONG CHEN
 Respondent

Hearing: 13 October 2025

Court: Courtney, Palmer and Collins JJ

Counsel: D Zhang and E T Wuozhing for Applicant
 C Jiang and K A Mills for Respondent

Judgment: 22 October 2025 at 11 am

JUDGMENT OF THE COURT

- A The application for an extension of time to file the case on appeal and apply for a hearing date is declined.**
- B The applicant must pay the respondent costs for a standard application on a band A basis together with usual disbursements.**
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REASONS OF THE COURT

(Given by Courtney J)

Introduction

[1] On 12 July 2024, Mr He filed an appeal against a decision of Becroft J dismissing Mr He’s claim against Mr Chen.¹ The claim arose from a commercial

¹ *He v Chen* [2024] NZHC 1565 [judgment under appeal].

relationship in which milk formula was exported from New Zealand to Hong Kong and China. Mr He asserted that a joint venture existed between him and Mr Chen. The relevant events occurred between 2007 and 2012. The proceedings were commenced in 2014 but did not come to trial until 2024.

[2] Mr He filed his appeal within time but failed to apply for a hearing date or file a case on appeal within the time required by r 43(1) of the Court of Appeal (Civil) Rules 2005. On 16 December 2024, the appeal was deemed abandoned as of 14 October 2024.² On 5 February 2025, Mr He applied under r 43(2) for an extension of time, seeking orders reinstating the appeal, allowing him till 28 February 2025 to file a case on appeal and seek a hearing date.³ Mr Chen opposes the application.

[3] The factors relevant to an application for extension under r 43 are those set in the decision of the Supreme Court in *Almond v Read*.⁴ These are: the length of the delay and the reason for it; the parties' conduct; the extent of prejudice to the other party; and whether the appeal raises any issue of public importance. Generally, the merits of the appeal will not be relevant unless it is clearly hopeless.⁵

The application

Delay

[4] Mr He says that he was unrepresented at the time and did not realise that he was required to file a case on appeal within a specified time. By the time he realised he had to do so, he found that the case on appeal was too complex for him to prepare alone. However, he now has professional assistance (and has since filed a case on appeal).

² On 10 October 2024, Mr He had, in fact, sought a two-month extension (to 16 December 2024) but the Court of Appeal (Civil) Rules 2005, r 43(1A)–(1B) only permitted an extension of up to one month. In any event, Mr He had not filed the case on appeal by that date either.

³ See Court of Appeal (Civil) Rules, r 43(7).

⁴ *Yarrow v Westpac New Zealand Ltd* [2018] NZCA 601 at [4], referring to *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38].

⁵ *Almond v Read*, above n 4, at [38]–[39].

[5] Mr Jiang, for Mr Chen, pointed out that Mr He has substantial litigation experience in New Zealand, including as a litigant in person. He has engaged in three related pieces of litigation against Mr Chen since 2012, including appeals to this Court and the Supreme Court, and was unrepresented in one of those appeals. He was unrepresented for the 12-day trial in the present matter, assisted only by a McKenzie friend. Nor, according to Mr Jiang, was the case on appeal difficult to prepare because, as a result of Mr He having failed to prepare the common bundle in the High Court, Mr Chen's lawyers prepared it. All that was required for the case on appeal was to add the judgment under appeal, the notes of evidence and the notice of appeal.

[6] We do not accept Mr He's explanation as satisfactorily accounting for the delay. Mr He clearly does have sufficient experience of court processes to know that there are time frames that must be complied with. He has had legal representation previously and has representation now. He has not suggested that he was unable to afford a lawyer.

The parties' conduct and prejudice

[7] The question of the parties' conduct and prejudice to Mr Chen are related. Mr Jiang pointed out that the trial of this matter is only one in a series of claims by Mr He against Mr Chen, all of which have been unsuccessful and all of which have been accompanied by delays and failures by Mr He to comply with timetable orders. As noted, the subject matter of the judgment under appeal dates back to between 2007 and 2012. Mr Chen is being prejudiced by the ongoing cost and inconvenience of the protracted litigation and seeks finality.

[8] Apart from apologising for the inconvenience his delay has caused, Mr He has not sought to address any of these points. We accept Mr Jiang's submission that Mr He's conduct is to be viewed against the context of his previous litigation against Mr Chen. What emerges is a history of unsuccessful claims and appeals by Mr He against Mr Chen dating back more than a decade. Nor does Mr He dispute Mr Chen's complaint that the trial which resulted in the judgment under appeal was delayed because of Mr He's requests for adjournments and extensions. If Mr He's appeal were

to proceed, it would not be heard until 2026, some 18 years since the earliest events in question. We see the prejudice to Mr Chen as a significant issue in our consideration of the application for extension.

Merits

[9] Ms Mills addressed this issue on behalf of Mr Chen. She acknowledged that the merits of a prospective appeal would not usually be relevant, and might only be considered if the appeal was clearly without merit. She submitted that Mr He's appeal was such an appeal. She pointed to the fact that the notice of appeal was expressed in the most general terms and did not identify any specific error by the Judge.

[10] Ms Mills also referred to the Judge's description of "the inherent implausibility" of Mr He's claims⁶ and of the fact that in relation to four of the causes of action, there was "the fundamental problem" as to whether Mr He had established that Mr Chen had caused him any loss, even indirectly.⁷ This was because Mr He had not adduced any accounting or other evidence to demonstrate a loss as a result of Mr Chen's conduct. Mr Zhang, for Mr He responded to the latter point that it was not relevant because, in the context of a claim based on an asserted joint venture, the proper relief was an accounting, which had been sought.

[11] We are not in a position to determine whether the appeal is clearly hopeless and do not place any significance on this aspect in considering the application.

Conclusion

[12] We are not satisfied that Mr He has satisfactorily explained his delay in applying for an extension. His conduct over the course of this proceeding counts against him heavily. Mr Chen is entitled to see the dispute over matters that started in 2007 finalised.

⁶ Judgment under appeal, above n 1, at [83] and [140].

⁷ At [81]–[83].

Result

[13] The application is for an extension of time to file the case on appeal and apply for a hearing date is declined.

[14] The applicant must pay the respondent costs for a standard application on a band A basis together with usual disbursements.

Solicitors:

Advent Ark Lawyers, Auckland for Applicant

Tompkins Wake, Auckland for Respondent