

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2012] NZEmpC 180  
ARC 30/10**

IN THE MATTER OF            proceedings removed from the  
   Employment Relations Authority

AND IN THE MATTER OF interlocutory applications

BETWEEN                      ROBERT HAIG  
   Plaintiff

AND                              EDGEWATER DEVELOPERS  
   LIMITED  
   First Defendant

AND                              CARRINGTON FARMS LIMITED  
   Second Defendant

AND                              PH II INCORPORATED  
   Third Defendant

Hearing:            15 October 2012 (by telephone conference)  
   (Heard at Auckland)

Counsel:            Wayne Peters, counsel for plaintiff  
   Josh McBride, counsel for defendants

Judgment:        15 October 2012

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**INTERLOCUTORY JUDGMENT NO 4 OF CHIEF JUDGE G L COLGAN**

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[1]     Two issues have arisen before the start (tomorrow) of a three day interlocutory hearing on limitations issues.

[2]     The first issue has been able to be resolved between counsel so that I only need to record the position. The plaintiff, Mr Haig, is not in good health and may have difficulty giving evidence, as well as he would wish, without some minor and

agreed changes to that process. Without objection, Mr Haig may have pen and paper in the witness box by which to write notes for himself or to record questions or parts of questions asked of him. He may need the opportunity from time to time to stand and walk around which he will be able to do. It may also be necessary for short and more frequent than usual breaks to be taken while he is giving his evidence. This, too, will be able to be accommodated and counsel or Mr Haig should indicate to the Court if and when these are required.

[3] The second matter in dispute is the plaintiff's application to have the evidence of Frederick Rosetti taken by video link with Connecticut in the United States of America. The defendant opposes this course for a number of reasons including its extreme lateness, the abandonment of the plaintiff of use of the Letters of Request procedure, the probable unavailability to the witness of a bundle of documents, and the alleged inadmissible nature of Mr Rosetti's evidence.

[4] I will not prohibit Mr Rosetti from giving evidence, either in the courtroom in New Zealand or by video link as the defendants submit the Court should. At issue are causes of action in the proceeding that may not survive the applications to strike them out on limitations grounds. Each party should be able to call and rely on relevant evidence of witnesses.

[5] However, the very late application, without the usual and necessary supporting technical information, may mean that it is very unlikely that Mr Rosetti's evidence will be able to be given in the three days set aside for the case this week starting tomorrow.

[6] First, because the plaintiff's proposal is that a New Zealand court take the evidence of a US citizen in the United States of America, the Court requires either the agreement of, or at least the non-objection to this course of action by, the Government of the United States of America. This condition was flagged to the plaintiff by the Court last week but no step seems to have been taken by counsel to satisfy it.

[7] Mr Peters relies on the very general provisions of the Evidence Act 2006. Even although that Act does not apply to proceedings in this Court, it does not address the constitutional or diplomatic implications of a New Zealand court taking the evidence on oath or affirmation of a foreign citizen on foreign soil. I do not accept Mr Peters's assertions that this will simply be able to be dealt with by Mr Rosetti making an unsworn statement of his evidence.

[8] So, if the plaintiff does seek to have the evidence of Mr Rosetti taken by video link, counsel will have to establish to the Court's satisfaction that the Government of the United States of America has at least no objection to this course. I imagine that the US Embassy in Wellington is the logical starting point for that inquiry by the plaintiff.

[9] Subject to satisfaction of this condition and to the witness having available to him the bundle of documents that is going to be used in this week's hearing, Mr Rosetti will be able to give evidence. The costs of doing so will have to be met by the plaintiff. Mr Rosetti will have to have a bible with him (if he is to give evidence on oath) and the oath or affirmation will be administered by the court registrar in New Zealand. Arrangements will have to be made for Mr Rosetti's evidence to be taken at a convenient time both for the Court in New Zealand and for him.

[10] If these arrangements cannot be made with effect this week, and if counsel for the plaintiff still wishes Mr Rosetti's evidence to be taken into account, the hearing this week may have to be adjourned after other witnesses have given their evidence to allow his evidence to be taken at a later time and then resumed for submissions. If that is to occur, the plaintiff will have to meet the additional legal costs incurred by the defendants as a result of such delays.

[11] Any questions about the admissibility of Mr Rosetti's intended evidence should, if possible, be resolved before it is given.

[12] Leave is reserved for any party to make any further interlocutory applications on reasonable notice in respect of this issue.

GL Colgan  
Chief Judge

Judgment signed at 1.15 pm on Monday 15 October 2012