**IN THE EMPLOYMENT COURT**
**AUCKLAND**

**[2012] NZEmpC 219**
**ARC 19/11**

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| IN THE MATTER OF | proceedings removed from the Employment Relations Authority |
| BETWEEN | JOHN MATSUOKA<br>Plaintiff |
| AND | LSG SKY CHEFS NEW ZEALAND LIMITED<br>Defendant |

**ARC 23/12**

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| AND IN THE MATTER OF | proceedings removed from the Employment Relations Authority |
| BETWEEN | JOHN MATSUOKA<br>Plaintiff |
| AND | LSG SKY CHEFS NEW ZEALAND LIMITED<br>Defendant |

Hearing: 13 December 2012
(Heard at Auckland)

Counsel: Anthony Drake and Rosemary Childs, counsel for plaintiff
Garry Pollak and Anja Borchardt, counsel for defendant

Judgment: 19 December 2012

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**INTERLOCUTORY JUDGMENT OF JUDGE B S TRAVIS**

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[1] This is an application by the defendant (LSG) for orders preventing Kensington Swan from continuing to act for the plaintiff, Mr Matsuoka and two

companies, one of which was his former, and now current employer, in High Court proceedings. These matters arose out of the transfer of Mr Matsuoka and 39 other employees to LSG under Part 6A of the Employment Relations Act 2000 (the Act). To determine this application it is necessary to examine the current proceedings before the Employment Court.

## Employment Court proceedings

[2] In a chambers directions conference held on 12 October 2012 to deal with what were consolidated matters, I indicated that because of my unavailability to deal with the consolidated proceedings in 2013, the proceedings should be deconsolidated. I suggested a course whereby I would deal with the outstanding remedies in ARC 19/11 of compensation under s 123(1)(c)(i) of the Act for the distress, humiliation and injury to feelings the plaintiff allegedly suffered as a result of the disadvantage in not being transferred to the defendant's employment under Part 6A and also the plaintiff's claim for penalties, which claim I granted him leave to increase from $10,000 to $20,000.

[3] I had noted in ARC 19/11 that there was conflicting material about which LSG indicated it might wish to file new evidence on what were Mr Matsuoka's true employment entitlements. When proceedings in the Employment Relations Authority relating to the alleged unjustifiable dismissal of the plaintiff by LSG on 11 July 2011[1] were removed to the Court[2] (and became ARC 23/12) because I anticipated both proceedings involved issues which had yet to be resolved as to the plaintiff's entitlements, I consolidated them, over the objection of the plaintiff.

[4] However, on 12 October 2012, I suggested that the issues as to whether there had been a sustainable claim for loss of past and future benefits under s 123(1)(c)(ii) of the Act, which included the use of a fuel card, the provision of health insurance and KiwiSaver payments along with reimbursement of lost wages and holiday pay and leave entitlements, could, and should be resolved as part of ARC 23/12, even though they related in part to matters that arose prior to the unjustifiable dismissal

[1] Date taken from paragraph [14l] of the first amended statement of claim in ARC 23/12 and admitted in paragraph [11] of the defendant's first amended statement of defence.
[2] [2012] NZERA Auckland 95.

grievance. I suggested that the entitlements and the extent of the payment of those benefits as well as any other claim for remedies, apart from those I suggested I would resolve under ARC 19/11, would be dealt with by the trial judge when dealing with ARC 23/12. This had the added advantage of removing from the consolidated proceedings the claim for penalties under ARC 19/11 which, as counsel for the plaintiff correctly noted, could prevent the plaintiff from obtaining disclosure from LSG pursuant to the notices he has issued in ARC 23/12.

[5] Counsel agreed to obtain instructions notwithstanding the conflict of interest issue raised by Mr Pollak with which this judgment largely deals. I record that counsel have advised that their clients are agreeable to the proceedings in ARC 19/11 and ARC 23/12 being deconsolidated and dealt with in the way that I had suggested. The two outstanding remedies issues in ARC 19/11 will be resolved in those proceedings on the basis of the submissions already filed and the only outstanding matter would then be the issue of costs in ARC 19/11 which could be resolved after the remedies issue has been determined.

[6] The more fundamental issue that was raised at the directions conference was the allegation made by Mr Pollak on behalf of LSG that there was a conflict of interest for the plaintiff's solicitors between the plaintiff and the two defendants they also act for in High Court proceedings, namely Pacific Flight Catering Ltd and PRI Flight Catering Limited (which I shall jointly refer to as Pacific). Pacific is being sued by LSG, in the proceedings before the High Court, for the cost of leave entitlements that Pacific owed to 40 of its staff at the time of their transfer to LSG under Part 6A. It is common ground that one of those 40 employees is the plaintiff in the proceedings before the Employment Court, Mr Matsuoka.

[7] LSG seeks a declaration that there is a real and significant potential for conflict in the proceedings in the Employment Court and that it is not appropriate for Kensington Swan to be acting for both Mr Matsuoka and for Pacific. Pacific is not a party to the Employment Court proceedings.

[8] In accordance with an agreed timetable, the parties exchanged memoranda, affidavits and summaries of submissions before the interlocutory hearing. LSG

claims that a conflict of interest has arisen because Kensington Swan acted for Pacific in the High Court proceedings and now also acts for the plaintiff in the proceedings before the Employment Court. Bell Gully previously acted for the plaintiff in ARC 19/12, but Kensington Swan have acted throughout in ARC 23/12.

[9] In the Employment Court proceedings there had been an issue between the parties as to Mr Matsuoka's entitlements at the date he transferred his employment from Pacific to LSG. During the hearing of ARC 19/11, the defendant produced evidence which Mr Pollak submitted showed that most of the transferring employees from Pacific to LSG had their wages, outstanding leave and other entitlements inflated. LSG's Human Resources Manager, Marie Park, gave evidence at the hearing before the Employment Court in ARC 19/11 and has provided affidavits in support of the present application by LSG.

[10] Mr Pollak submitted that Mr Matsuoka is claiming, in terms of his statement of claim before the Employment Court, a significant sum by way of compensation for wages allegedly lost, reimbursement and the payment of an alleged redundancy payment. He submitted that these sums were of significance and have been unable to be quantified without accurate leave, wage and time records.

[11] In the High Court proceedings, Ms Park was called on behalf of LSG. In an affidavit filed in the Employment Court in support of LSG's present application, Ms Park deposes that she was present in the High Court when Gerda Gorgner, Pacific's Human Resources Manager and Acting General Manager, gave evidence. Ms Gorgner accepted that her role with Pacific required her to pass information to LSG about the transferring employees and she provided the leave balances for the 40 employees who were transferring across to LSG. Ms Gorgner said that she understood that the leave balances had been increased on the instructions of one of the owners of Pacific, Terry Hay. There was also evidence led before the High Court by a chartered accountant of an apparent anomaly because Mr Matsuoka's claim in leave entitlements was paid to him at $42 per hour, yet the summary of earnings records that he was being paid only $20 per hour.

[12] In the High Court judgment delivered on 25 October 2012,[3] his Honour Justice Woolford noted that Pacific had earlier formally admitted in its first amended statement of defence that the accrued entitlements for sick leave and annual holidays and alternative holidays in respect of the 40 staff was $257,809.05, but that Mr Stewart QC, counsel for Pacific, sought leave to change this admission to a denial on the basis that the evidence at trial established that this figure was incorrect. His Honour stated:

> [8] The figure of $257,809.05 was calculated on the basis of leave balance information provided to LSG by Pacific on the date of transfer of the 40 staff. The evidence at trial however established that the information provided to LSG on that date had been deliberately inflated. Pacific now accepts that shortly before the 40 staff transferred to LSG, it altered the pay records of all but two or three of the staff (in large part without the employees' knowledge) to increase their leave balances by between 40 and 100 hours. It also increased their hourly pay rates, again without consultation or formal notification.
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> [9] Prior to the date of transfer, LSG had sought access to the wage and time records of the 40 staff to ensure that they would be paid on time and correctly. They were not provided prior to transfer. After the date of transfer, Ms Park wrote to Pacific's Human Resources Manager and Acting General Manager, Ms Gerda Gorgner, making a formal request for all transferring employees' historical wage and time records. Ms Park attached written requests from all but four of the 40 staff authorising the release of their records. Pacific again failed to provide the wage and time records for the 40 staff.
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> [10] The Service and Food Workers Union together with four of the 40 staff took proceedings against Pacific alleging a breach of s 130 of the Act, which obliges employers to provide wage and time records to an employee upon request. The Employment Relations Authority found a breach of s 130 and in a determination dated 13 June 2012 ordered Pacific to pay penalties totalling $20,000.00.
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> [11] During the course of evidence in this case Ms Gorgner produced a leave balance report from Pacific dated 10 January 2011. That document had not previously been disclosed. While the report goes some way to disclosing the true position, Ms Gorgner could not adequately explain why leave balance information for five of the 40 staff had been redacted from the report.
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> [12] Ms Gorgner acknowledged that there were some pay rises and adjustments in the annual leave balances but said she was not privy to the decisions made around those adjustments. She said that the decisions were taken by Mr Terry Hay, one of the owners of Pacific, and, although she was the Human Resources Manager and Acting General Manager, she was not

[3] *LSG Sky Chefs New Zealand Ltd v Pacific Flight Catering Ltd and PRI Flight Catering Ltd* [2012] NZHC 2810.

> consulted. Ms Gorgner acknowledged that there would be additional costs for LSG but could not see it as having a big impact because LSG was so much larger than Pacific. She also noted that the Act did not impose a freeze on terms and conditions of employment prior to transfer. Finally, she acknowledged providing assistance to some of the 40 staff in bringing personal grievance claims against LSG.
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> [13] Mr Hay did not give evidence for Pacific regarding his reasons for giving pay rises to and increasing the leave balances of the staff about to transfer to LSG. Questions therefore remained unanswered as to why one of the 40 staff whose leave balances were not increased was the Union organiser or why the staff who remained with Pacific did not have their leave balances increased. The absence of evidence from Mr Hay means it is difficult to draw any firm conclusions as to the reasons why pay rates and leave balances were increased prior to transfer. That this decision has been left unexplained, particularly in light of the evidence of Ms Gorgner, is unfortunate.

[13] His Honour also recorded that Pacific was granted leave to amend its statement of defence on conditions which included the requirement of Pacific to provide LSG with accurate leave balance reports and wage and time records for each of the 40 staff. The second amended statement of claim dated 15 August 2012, stated in paragraph [21](c):

> The sum of $257,809.05 is inflated and therefore incorrect.

[14] In opposition to the orders sought, Mr Matsuoka swore an affidavit dated 21 November 2012, in which he stated that Kensington Swan first started acting for him in January 2012 and he was informed that they also acted for Pacific in the High Court proceedings. He stated:

> 6 In the current proceedings, Kensington Swan is arguing that the increased leave entitlements should apply to align with my leave records. I believe I am entitled to claim the increased leave entitlements which occurred approximately three weeks before I was supposed to transfer to the defendant. On this basis, I instructed Kensington Swan to seek remedies based on the increased leave entitlements I enjoyed with PRI.
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> 7 I refer to paragraph 2 of Ms Park's affidavit in which she swears my wages and claimed entitlements are inaccurate, including that wage entitlements and various leave entitlements had been inflated. My wages, and entitlements, I am claiming in the current proceedings are not inaccurate. I know that my leave entitlements were increased approximately three weeks before I was supposed to have transferred to the defendant. I did not disagree with these changes to my leave entitlements because they were beneficial to me. The amount of

> wages I claim is correct. In accordance with my employment agreement, I was entitled to $42 per hour.

[15] Ms Gorgner in her affidavit sworn on 21 November 2012 in opposition to the present application deposes that:

> 7 Approximately three weeks before former PRI employees were supposed to transfer to the defendant, PRI increased wages and leave balances of the majority of its employees and provided wage and leave records to the defendant based on these increased wage and leave balances. Increases in wage and leave entitlements were made by PRI prior to the defendant signing the subsequent contracting agreement with Singapore Airlines. I refer to paragraph 5 of Ms Park's affidavit dated 23 March 2011 in which she states that the agreement between the defendant and Singapore Airlines was not signed until 18 February 2011. … PRI received legal advice from Bell Gully solicitors, which confirmed that an outgoing employer (PRI) could increase employees' entitlements before employees transferred to the incoming employer.

[16] Ms Gorgner also deposes that had the defendant accepted the increased leave entitlements applied to former Pacific employees in the High Court proceedings, Pacific would not have argued that different leave entitlements applied to former Pacific employees. Therefore Pacific considered that Mr Matsuoka is entitled to claim the changed or increased entitlements.

## Submissions

[17] Against this background, Mr Pollak submitted that the issues of accuracy of wage and time records and leave entitlements were directly relevant to the proceedings before the Employment Court. He advised that LSG was intending to apply for formal disclosure from Mr Matsuoka and for third party disclosure from Pacific.

[18] Mr Pollak submitted that the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules) were relevant to LSG's application. He first submitted that plaintiff's counsel cannot progress the plaintiff's claim as it presently stands knowing that the "records are false". He referred to rule 13.10 which states:

**Presenting evidence and witnesses**

13.10 A lawyer must not produce evidence knowing it to be false.

[19] Mr Pollak submitted that the plaintiff's counsel knows that such documentation is false due to their involvement with Pacific in the High Court proceedings, as paragraph [21](c) of the second amended statement of defence (set out above) demonstrates.

[20] Mr Drake, counsel for the plaintiff, took issue with this allegation. He submitted it will be argued in the Employment Court that Pacific was legally entitled to increase the leave balances. Even though it was contended in the High Court proceedings that the sum of $257,809.05 was inflated and therefore incorrect, he submitted that it did not flow from this that the documents relied on by Mr Matsuoka in support of his claims were false. He submitted that the issue of whether the wage, time and leave records are "incorrect" can only be decided once these issues have been resolved. Even if the documents produced to the Court are found subsequently to be incorrect, he submitted this was not a bar to Kensington Swan continuing to act.

[21] I accept Mr Drake's submissions. I find that there is no evidence at present that Pacific, with knowledge that it was acting in breach of legal obligations, inflated the leave, wage and time records and Mr Matsuoka's hourly rate. That these were deliberately inflated was found by the High Court but it will apparently be argued on behalf of Mr Matsuoka in the Employment Court that this was done on the basis of legal advice received from Bell Gully.

[22] Mr Pollak then dealt with rule 6.1 which states:

**Conflicting duties**

6.1 A lawyer must not act for more than 1 client on a matter in any circumstances where there is a more than negligible risk that the lawyer may be unable to discharge the obligations owed to 1 or more of the clients.

[23] Mr Pollak submitted that Pacific's interests and those of the plaintiff are at variance. He questioned why, if the plaintiff and Pacific honestly and reasonably

believed that the plaintiff's balances were correct and accurate, would Pacific then have acknowledged in the High Court that they were not, for the purposes of not wishing to be bound by the inflated balances? He submitted there appeared to be a conflict for counsel to represent both Pacific and the plaintiff where their interests are divergent and that they should be represented separately.

[24] Mr Pollak accepted that it is generally the right of the plaintiff to have counsel of his choice, citing *Owen v McAlpine Industries Ltd*[4] and *Black v Taylor*.[5] However, he submitted, there are several areas in which there appears to be a conflict in terms of the rules, particularly because the interests of the plaintiff and Pacific are "diametrically opposed". He submitted that there will be significant issues of client solicitor discovery and disclosure obligations which could give rise to further conflicts. However, no clear example of this was provided.

[25] I consider that the defendant has established that there is more than a negligible risk that the cases being presented in the Employment Court by Mr Matsuoka, and that which was presented in the High Court by Pacific, may be incompatible in relation to the accuracy of the records which the High Court found were deliberately inflated shortly before the transfer. Pacific is taking the position that the inflated records are incorrect, whereas Mr Matsuoka in the Employment Court proceedings appears to be taking the position that the inflated figures are correct, that he consented to them and therefore they are binding on LSG. I accept Mr Pollak's contention that that does create, on the face of it, conflict in terms of rule 6.1.

[26] As an alternative argument, Mr Drake submitted that if rule 6.1 applied, contrary to the plaintiff's contention, rule 6.1 is subject to rule 6.1.1 which provides:

> Subject to the above, a lawyer may act for more than 1 party in respect of the same transaction or matter where the prior informed consent of all parties concerned is obtained.

[27] Informed consent is defined in rule 1.2 as follows:

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[4] [1999] 1 ERNZ 870.
[5] [1993] 3 NZLR 403 (CA).

> **Informed consent** means consent given by the client after the matter in respect of which the consent is sought and the material risks of and alternatives to the proposed course of action have been explained to the client and the lawyer believes, on reasonable grounds, that the client understands the issues involved.

[28] Mr Drake cited *Taylor v Schofield Peterson*[6] where a full Court of the High Court dealt with an issue of whether a fiduciary, such as a lawyer, could act for two clients where there was a conflict of interest and held that that was possible as long as the lawyer could prove that both parties had agreed on the terms of the transaction and had given informed consent to the dual representation. Hammond J, while delivering the judgment of the Court, referred to the use of the term "informed consent" in the Privy Council decision *Clark Boyce v Mouat*,[7] where the Privy Council stated:[8]

> There is no general rule of law to the effect that a solicitor should never act for both parties in a transaction where their interests may conflict. Rather is the position that he may act provided that he has obtained the informed consent of both to his acting. Informed consent means consent given in the knowledge that there is a conflict between the parties and that as a result the solicitor may be disabled from disclosing to each party the full knowledge which he possesses as to the transaction or may be disabled from giving advice to one party which conflicts with the interests of the other. If the parties are content to proceed upon this basis the solicitor may properly act.

[29] In *Taylor* Hammond J stated:[9]

> It follows, in our view, from *Clark Boyce v Mouat* that a solicitor must always: (1) recognise a conflict of interest, or a real possibility of one; (2) explain to the client what that conflict is; (3) further explain to the client the ramifications of that conflict (for instance, it may be that she could not give advice which ordinarily she would have given); (4) ensure that the client has a proper appreciation of the conflict, and its implications; and (5) obtain the informed consent of that client. Then, and only then, can the solicitor act.

[30] Mr Drake submitted that Kensington Swan had sought and obtained the informed consent of both the plaintiff and Pacific. He relied on the affidavits of Mr Matsuoka and Ms Gorgner as to their understanding of the respective position of Mr Matsuoka and Pacific. Both stated they consented to Kensington Swan continuing to act.

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[6] [1999] 3 NZLR 434.
[7] [1993] 3 NZLR 641 (PC).
[8] At 646.
[9] At 440.

[31] Mr Pollak submitted that for there to be informed consent, the plaintiff and the representatives of Pacific would need to have received independent legal advice. He initially submitted that that was an implication of rule 6.1.1 in the definition of informed consent in rule 1.2. In reply, he then extended his submissions to include reference to rules 6.1.2 and 6.1.3 which state:

> 6.1.2 Despite rule 6.1.1, if a lawyer is acting for more than 1 client in respect of a matter and it becomes apparent that the lawyer will no longer be able to discharge the obligations owed to all of the clients for whom the lawyer acts, the lawyer must immediately inform each of the clients of this fact and terminate the retainers with all of the clients.
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> 6.1.3 Despite rule 6.1.2, a lawyer may continue to act for 1 client provided that the other clients concerned, after receiving independent advice, give informed consent to the lawyer continuing to act for the client and no duties to the consenting clients have been or will be breached.

[32] The situations covered by rules 6.1.2 and 6.1.3 are different and distinguishable from the present situation. They would cover the hypothetical situation discussed with counsel at the hearing of Mr Matsuoka deciding to bring proceedings against Pacific for either arrears of wages or other entitlements, if the Employment Court determines that LSG is not responsible for these. In that situation there is an absolute embargo on the solicitors acting for both parties. There is, however, the possibility of them acting for one after independent advice has been obtained and both consent to this course.

[33] In the present situation, I consider the matter is governed by rule 6.1.1 and rule 1.2 does not require the informed consent to include independent advice. I note that in *Clark Boyce*, the plaintiff had rejected the opportunity for independent advice although it was apparently offered. That did not appear to be fatal to the defence proffered by the solicitors, in which they claimed they had been given informed consent.

[34] However, the difficulty for the plaintiff in the present case is that although he and Ms Gorgner have clearly indicated that both appear to understand the situation and have no objection to Kensington Swan acting for both Pacific and the plaintiff, there is no certification in terms of rule 1.2 that "the lawyer believes, on reasonable grounds, that the client understands the issues involved".

[35] Mr Drake sought the leave of the Court to file an affidavit addressing this aspect. There was no objection from Mr Pollak. The matter was adjourned part heard to allow that affidavit to be filed.

[36] I advised counsel in open Court that if the affidavit addressed the situation adequately in terms of rule 1.2, I would find that although there was more than a negligible risk of a conflict, both Mr Matsuoka and Pacific through Ms Gorgner, had given informed consent to that firm continuing to act for both of them.

[37] The plaintiff subsequently filed an affidavit of Rosemary Childs, a solicitor employed at Kensington Swan, affirmed on 17 December 2012. Ms Childs confirmed that when Kensington Swan commenced acting for Mr Matsuoka in January 2012, he was advised of the firm's involvement on behalf of Pacific in the High Court and that Mr Matsuoka appeared to fully understand the position and all of its ramifications. She deposed that Mr Matsuoka was informed that the Employment Court could potentially refer to evidence provided in the High Court that Pacific was arguing that lower leave entitlements should apply. She deposed that Mr Matsuoka confirmed he understood the position and its ramifications, that he wanted Kensington Swan to continue acting for him in his claim for a personal grievance and did not wish to seek other legal advice.

[38] On the basis of this affidavit evidence and that of Mr Matsuoka and Ms Gorgner, I am satisfied that Mr Matsuoka has given informed consent, as defined in rule 1.2, to Kensington Swan continuing to act for him in these proceedings and that the requirements of rule 6.1.1 of the Rules have been met.

[39] Mr Pollak also referred to rule 7 which states:

> A lawyer must promptly disclose to a client all information that the lawyer has or acquires that is relevant to the matter in respect of which the lawyer is engaged by the client.

[40] Mr Pollak conceded that on the basis of Mr Matsuoka's affidavit of 21 November 2012, full disclosure appeared to have been made to the plaintiff, that he was aware of the intentional inflation of his leave entitlements and that he did not disagree with these changes as they were beneficial to him. I do not accept Mr

Pollak's contention that rule 7 is still of consequence because his counsel is in the position of having to disclose to the plaintiff that for other purposes, that is to say the High Court proceedings, it is accepted by Pacific that the plaintiff's balances are incorrect and should revert to the correct amount. That has all apparently been disclosed. I therefore did not require Mr Drake to address this rule. I record that I accept his written submissions that LSG has provided no evidence in support of the allegation of breach and that the case he cited, *McKaskell v Benseman*,[10] supported his position that the primary obligation of a fiduciary such as a solicitor, is to reveal all material information that comes into his or her possession concerned with his or her client's affairs.

[41] Mr Pollak then contended that on the evidence that has now been placed before the Court, Pacific is "assisting" Mr Matsuoka in his personal grievance and this amounted to the tort of maintenance. He submitted that this maintenance issue was of significance and further supported LSG's concerns about the conflict situation. He contended that the Court should maintain some control over proceedings involving third party funding. He contended that any funding agreement should be produced to the Court and to the defendant.

[42] Both counsel referred to evidence that was led in the Employment Court previously in ARC 19/11 that when Mr Matsuoka attended LSG's premises for the first time he was represented by an industrial advocate who was being paid by Pacific. Both counsel cited a recent Court of Appeal decision in *Contractors Bonding Ltd v Waterhouse*[11] which dealt with an independent litigation funder. The Court of Appeal required both the Court and the non-funded party to be given formal notice of that involvement with details about the litigation funder and its financial standing and viability.[12] The Court of Appeal preferred New Zealand authorities on how the torts of maintenance and champerty had been developed which took into account the desirability of access to justice.[13]

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[10] [1989] 3 NZLR 75.
[11] [2012] NZCA 399, [2012] 3 NZLR 826.
[12] At [67].
[13] At [60].

[43] Mr Drake accepted that Pacific was assisting some of its former employees in claims for grievances but contended that the *Contractors* case could be distinguished on the basis contained in paragraph 17 of the Court of Appeal judgment:

> [17] The first issue arising on the appeal is whether the courts should exercise any form of oversight over proceedings between individual litigants where a litigation funder is involved. We interpolate here that when we refer to a litigation funder, we mean a third party in the business of funding civil litigation. There is a spectrum of possible funding arrangements. At the hearing, counsel referred to litigation funding in a representative action, litigation funding in an individual claim, litigation funding by an associated body, litigation funding by an insurance company by subrogation, state funding via legal aid, and funding by a relative. The last four scenarios do not engage any particular concerns.

[44] Mr Drake submitted that there was no evidence that Pacific was in the business of funding civil litigation so that supervision by the Court or undertakings from Pacific were required.

[45] I accept Mr Drake's submissions. This is individual litigation funded by a former employer, although now the plaintiff's current employer, and I do not consider it engages any particular concerns.

[46] For these reasons I dismiss LSG's application and determine on the evidence provided that there is no reason covered by the Rules which would not permit Kensington Swan to continue to act for Mr Matsuoka and Pacific.

[47] Costs are reserved.

B S Travis
Judge

Judgment signed at 12.45pm on 19 December 2012