

**IN THE EMPLOYMENT COURT
CHRISTCHURCH**

**[2012] NZEmpC 99
CRC 17/11**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

BETWEEN MAORI HILL & BALMACEWEN
PHARMACY LIMITED
Plaintiff

AND SIRAYA O'SULLIVAN
First Defendant

CRC 21/11

IN THE MATTER OF an application for leave to file challenge
out of time

BETWEEN MAORI HILL & BALMACEWEN
PHARMACY LTD
Plaintiff

AND LABOUR INSPECTOR (JO-ANN DUFF)
Defendant

Hearing: Following a telephone conference call held on 26 June 2012
(Heard at Christchurch)

Counsel: Werner van Harselaar, counsel for plaintiff
Meghan Zetko, counsel for defendants

Judgment: 26 June 2012

**INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS IN
RELATION TO AN APPLICATION FOR ADJOURNMENT**

[1] These proceedings were set down for a two day hearing, commencing on 2 July 2012. Counsel for the plaintiff has filed a memorandum seeking an

adjournment. That application is sought on the basis that Mr Vohora (who is the director of Maori Hill and Balmacewen Pharmacy Limited, and sole pharmacist at the company's pharmacy in Maori Hill, Dunedin) is suffering from a medical condition, the details of which are set out in a doctor's report dated 22 June 2012. It is against Mr Vohora that the key allegations are advanced.

[2] Dr Johnson's report notes that Mr Vohora underwent cataract surgery on 5 June 2012. He was seen on 9 June 2012 when he presented with flashing and reduced vision in his eye, a flat cornea and a leaking wound. Dr Johnson says that Mr Vohora's vision is impaired and unlikely to improve until the sutures are removed, currently estimated to take place around 10 July (namely 6 weeks after his operation). Dr Johnson records that Mr Vohora is:

highly likely to get significant distortion out of his right eye that may impact his ability to fuse his vision due to the high degree of astigmatism induced by corneal stitches.

[3] Dr Johnson concludes by expressing the opinion that when Mr Vohora's sutures are removed he should return to normal activities.

[4] Counsel for the defendants both raised issues as to the extent which the medical information supported an application for an adjournment, but confirmed that the defendants were prepared to abide the decision of the Court.

[5] A telephone conference was convened this afternoon. Ms Zetko, counsel for Ms O'Sullivan, raised concerns about the delays in bringing these proceedings to a conclusion. She referred to issues that she said had arisen in 2011, also in relation to difficulties with Mr Vohora's vision, and which had resulted in delays before the Employment Relations Authority. She said that problems had been encountered in securing Mr Vohora's agreement to dates for the Authority's subsequent investigation meeting, and that she was concerned to avoid similar issues arising on any adjournment. Ms Zetko also noted concerns about the plaintiff's financial position, arising from recent press coverage.

[6] Ultimately the Court must be guided by the interests of justice in determining an application for an adjournment. Mr Vohora is entitled to an adequate opportunity

to prepare for, and participate actively in, the hearing. A number of serious allegations are advanced against him and there is potential for significant liability. He is, for example, entitled to follow the transcript of evidence and written briefs and exhibits referred to during the course of the hearing. I am satisfied, based on material filed with the Court, that Mr Vohora's ability to do so will likely be compromised given his current medical condition.

[7] I accept that further delays are undesirable and that the proceedings have been on foot for some time. However, it is apparent that an alternative fixture can be accommodated relatively expeditiously (on 23 and 24 August 2012). I note that the parties have complied with the timetabling orders earlier made, and that briefs of evidence and a common bundle of documents have been filed and served.

[8] In the circumstances I consider that it is in the interests of justice that the hearing be adjourned. Counsel for Ms O'Sullivan is to advise the Registrar, as soon as possible, as to the defendant's (in CRC 17/11) availability for a fixture on 23 and 24 August 2012. Mr La Hood (counsel for the Labour Inspector) confirmed the Inspector's availability on the proposed dates. Counsel for the plaintiff also advised that the plaintiff will be in a position to proceed to a hearing on 23 and 24 August.

[9] The application for an adjournment is granted. The current hearing dates are vacated. Subject to confirmation from Ms Zetko, these proceedings will be set down for hearing for two days, commencing at 9.30am on 23 August 2012, in Dunedin.

[10] Costs are reserved.

Christina Inglis
Judge

Judgment signed at 4.30pm on 26 June 2012