

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2012] NZEmpC 77
ARC 22/11**

IN THE MATTER OF proceedings removed from the
Employment Relations Authority

BETWEEN PREMIER EVENTS GROUP LIMITED
First Plaintiff

AND BA PARTNERS LIMITED (IN
LIQUIDATION AND RECEIVERSHIP)
Second Plaintiff

AND MALCOLM JAMES BEATTIE
First Defendant

AND ANTHONY JOSEPH REGAN
Second Defendant

AND PATRICIA PANAPA
Third Defendant

AND BETWEEN MALCOLM JAMES BEATTIE
First Plaintiff

AND ANTHONY JOSEPH REGAN
Second Plaintiff

AND PATRICIA PANAPA
Third Plaintiff

AND PREMIER EVENTS GROUP LIMITED
First Defendant

AND BA PARTNERS LIMITED (IN
LIQUIDATION AND RECEIVERSHIP)
Second Defendant

Hearing: 11 May 2012
(Heard at Auckland)

Counsel: Aaron Lloyd and Vonda Hodgson, counsel for Premier Events Group Limited
David Neutze and Natalie Lord, counsel for BA Partners Limited (in liquidation and receivership)
John Eichelbaum, counsel for Malcolm James Beattie, Anthony Joseph Regan and Patricia Panapa

Judgment: 11 May 2012

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

[1] There is a further application to prohibit the presentation of evidence. This must be ruled on now, which is the tenth day of a scheduled 13 days of trials in these proceedings.

[2] We are now at the point of beginning what might be described inelegantly as a trial within a trial, that is the hearing of BA Partners Limited's (BAPL) claim against Anthony Regan and his defences to it. This will involve some common witnesses in the sense that particularly Messrs Regan and Gill but perhaps others have already given evidence in the PEGL proceedings but will do so again over the next couple of days.

[3] Over last evening, a brief of Mr Regan's evidence-in-chief was produced. Much of that is said by counsel for BAPL to be inadmissible. Mr Neutze, counsel for BAPL, also attacks some parts of Mr Regan's brief of evidence in reply to that of his client's witnesses that the Court and the parties have had since mid-April.

[4] In making the decision I am about to, reference should be had to my admissibility interlocutory judgment of 1 May 2012¹ and the reasons for that which are now in draft form but will not be able to be issued realistically until after the weekend that is upon us.

¹ [2012] NZEmpC 71.

[5] I propose to address each of the paragraphs or parts of paragraphs identified by Mr Neutze in his submissions to me as follows.

[6] The first of those refer to Mr Regan's brief dated 10 May 2012 until I move to the reply brief dated 18 April 2012.

[7] Paragraph 2 is not inadmissible. It is simply introductory and any arguably inadmissible elements of it can be addressed by weight.

[8] Paragraph 3.6 will be inadmissible and should not be led.

[9] The paragraphs under the heading "4. HISTORY AT SPORTSWORLD" are inadmissible except for para 4.4.

[10] The paragraphs numbered 5 under the heading "SOME DETAIL REGARDING THE PROFITABILITY OF BA PARTNERS LTD AND THE PROFITABILITY OF THE GROUP OF COMPANIES TO WHICH IT BELONGED" are inadmissible.

[11] The contents of para 6 headed "DIVISION OF FUNCTIONS AT PEG / BA" are inadmissible.

[12] Paragraph 7 is headed THE REASONS I LEFT AND MOST OTHERS FOLLOWED INCLUDING MR BEATTIE will need to be modified and be confined only Mr Regan's reasons for leaving. This will probably mean that paras 7.3, 7.5, 7.7 and 7.12 in the current version of the brief will cease to exist.

[13] Next are the paragraphs under 8 headed "THE CARTAN ISSUE & BREACH OF CONTRACT". Those paragraphs will be inadmissible.

[14] Next, in para 9 under the heading "THE VENDETTA AGAINST MR BEATTIE" are a number of subparagraphs 9.1 to 9.14 (inclusive). These are similarly inadmissible.

[15] Although para 10 has been objected to, that amounts only to a heading and should be able to remain there.

[16] Paragraph 11 under the heading “ACCOUNT MANIPULATIONS” may survive but in very modified form in the sense that the following subparagraphs are inadmissible: 11.1, 11.2, 11.3, 11.5 (there is apparently no 11.4), 11.7, 11.8, 11.9, 11.10, 11.11, 11.12, 11.13 and 11.14.

[17] Next challenged is para 12 which is headed NO LOSS. I am not satisfied that that is inadmissible and that evidence may be led.

[18] Next is para 13 entitled “SET-OFF: FURTHER ASSET STRIPPING ACTIONS AS I DEPARTED AND AFTER I DEPARTED – THE NO CLEAN HANDS DEFENCE”. So long as the evidence relates to allegations of asset stripping affecting Mr Regan that are alleged to have commenced whilst he was still an employee of BAPL, the intended contents of that paragraph are not inadmissible. That is except for the final sentence in para 13.15 where the circumstances of Mr Dods are referred to. Turning also to para 13.16, and because I cannot see on a quick scan that there is a 13.17 (but that may be simply a matter of formatting), the passage in the intended evidence on p16 of the brief beginning “When I refused, Mr Gill appointed Mr Dods ...”, that evidence is inadmissible and should be deleted down to the beginning of para 13.18. Similarly para 13.20 will be inadmissible.

[19] Turning to the next subparagraphs under para 14 headed “ACQUIESCENCE”, I refuse the plaintiff’s application to rule those paragraphs inadmissible and they may be led.

[20] Despite the heading at para 15, “RESPONSE TO SOME BAP/GILL CLAIMS”, I determine that the contents of those paragraphs will be inadmissible.

[21] Next is the paragraphs headed 16, “THE DISSATISFACTION OF STAFF”. Paragraphs 16.1, 16.2 and 16.3 will be inadmissible but the contents of para 16.4 may be led.

[22] I next turn to the paragraphs under para 17 headed “THE PAYMENT OF 2ND FEBRUARY 2010”. The following subparagraphs are inadmissible and cannot be led: 17.6, 17.7, 17.8, 17.9. One factor in that decision is the uncertainty of whether evidence is to be led from Claudia Koutnik. If it is, then she can establish that evidence herself. If it is not, then Mr Regan cannot rely on evidence that is not led but can establish some matters himself.

[23] That concludes my dealing with the new brief of evidence-in-chief. I turn now to the reply brief.

[24] I intend to err on the side of allowing evidence that is in reply unless it can be shown to be clearly not in reply. That is, of course, because BAPL’s witnesses have put matters in issue, particularly through Mr Gill, and generally, in fairness and in terms of relevance, Mr Regan should be able to reply to those.

[25] However, paras 1.1 and 1.2 of Mr Regan’s reply brief will be inadmissible. So, too, will paras 1.11 and 1.17.

[26] Paragraph 1.29 should not be led, again because this seeks to reinforce the evidence of other witnesses who may or may not be called. If they are, then their evidence will be the best evidence. If they are not, then Mr Regan cannot piggy-back on evidence that is not given.

[27] Paragraph 1.38 is inadmissible, as will be para 1.42 of that reply brief. In all other respects the paragraphs challenged by Mr Neutze are not inadmissible.

GL Colgan
Chief Judge

Judgment delivered orally at 12.24 pm on Friday 11 May 2012