

**IN THE EMPLOYMENT COURT
WELLINGTON**

**[2013] NZEmpC 183
WRC 17/04
WRC 19/05
WRC 8/09**

IN THE MATTER OF an application for orders

BETWEEN LYNNE FRANCES SNOWDON
 Plaintiff

AND RADIO NEW ZEALAND LIMITED
 Defendant

Hearing: 30 September 2013
 (Heard at Wellington)

Appearances: Richard Fletcher and Michael Okkerse, counsel for the plaintiff
 Michael Quigg, Nicolas Logan and Jol Bates, counsel for the
 defendant

Judgment: 1 October 2013

INTERLOCUTORY JUDGMENT OF JUDGE A D FORD

The application

[1] At the commencement of this hearing on 30 September 2013, I heard argument on an application filed by the plaintiff on the afternoon of Friday, 27 September 2013 for an order entering judgment in favour of the plaintiff. The grounds of the application were that the defendant had failed to file a statement of defence to an amended statement of claim filed in each of the above proceedings on 20 March 2013. After hearing argument, I gave a brief oral ruling against the plaintiff and I indicated that I would give my reasons later. I now do so.

The background

[2] In interlocutory judgments dated 5¹ and 26 September 2013,² I highlighted the fact that this litigation goes back to a personal grievance first raised by the plaintiff as long ago as 15 November 2002. It has been set down for a fixture on previous occasions. On 5 November 2010, for example, Judge Travis allocated a firm fixture for a four-week hearing commencing on 1 August 2011. At the same time his Honour issued timetabling directions which, inter alia, required the plaintiff to file and serve her briefs of evidence by 25 March 2011. At the eleventh hour, and against the strenuous opposition of the defendant, Judge Travis reluctantly had to vacate that fixture in order to allow the plaintiff time to recover from a medical condition.³

[3] In a minute dated 21 December 2012, Judge Travis confirmed a number of matters dealt with in the course of a telephone directions conference that day including issues relating to expert witnesses and security for costs. In relation to the experts, Judge Travis confirmed a hearing for 28 February 2013 to deal with any matters relating to their expertise or independence. In relation to security for costs, his Honour directed that the plaintiff give security in the sum of \$200,000, in the form of either a payment into Court or a bond. Security was to be provided by 22 February 2013. Judge Travis also directed a six-week hearing for the substantive proceedings commencing on Tuesday, 4 June 2013.

[4] Of particular relevance to the present application was a paragraph in the minute of 21 December 2012 relating to amendment of the pleadings. It read:

18. Mr Carruthers has undertaken to consider the amendment of the pleadings in the three matters before the Court, and in particular the fraud proceedings under WRC 8/09. He will use his best endeavours to amend those pleadings by 28 February 2013, consistent with his other obligations. If, however, he has been unable to complete the amendment of the pleadings, by that date then a timetable for those amendments will be set at the hearing on 28 February 2013.

¹ [2013] NZEmpC 168.

² [2013] NZEmpC 176.

³ [2011] NZEmpC 96.

[5] By February 2013, Judge Travis had given notice of his retirement from the Bench and in late February the Court files relating to these proceedings were transferred to myself. On 1 March 2013, following submissions from counsel in relation to a minute of 26 February 2013, I issued an order containing a number of directions. In relation to the issue of security for costs, I ordered that security was to be given by 3 April 2013 and I directed that unless that order was strictly complied with then each of the proceedings before the Court would be struck out. In relation to the issue of amended pleadings, as the plaintiff had not by then filed the amended pleadings contemplated by Judge Travis, I directed:

- ix) If the plaintiff still proposes to file amended statements of claim in any of the proceedings then they are to be filed and served by Wednesday, 20 March 2013.

[6] As noted above, an amended statement of claim was filed in each proceeding on 20 March 2013.

[7] On 20 May 2013, after hearing argument over the course of some four days, I issued another interlocutory judgment,⁴ recording that the plaintiff had sought leave to appeal the order I made on 1 March 2013 relating to security for costs but the Court of Appeal, in a judgment dated 16 April 2013,⁵ had dismissed the application. Nevertheless, for the reasons explained in my judgment, it was necessary for the Court to grant an adjournment of the fixture scheduled for 4 June 2013. A new fixture was then confirmed for 30 September 2013 contingent on security for costs in the sum of \$240,000 being provided by the plaintiff on or before 2 September 2013. That contingency was duly complied with.

The plaintiff's case

[8] The plaintiff's application of 27 September 2013 for an order entering judgment was stated to be made pursuant to regs 19 and 20 of the Employment Court Regulations 2000 (the Regulations), rr 5.47(1), 5.48(1) and (3), 11.3 and 11.4 of the High Court Rules, and s 189 of the Employment Relations Act 2000 (the Act). Reliance was also placed on two affidavits of the same date filed in support by the

⁴ [2013] NZEmpC 84.

⁵ [2013] NZCA 108.

plaintiff's husband Mr Hickling, who is also a lawyer, and junior counsel for the plaintiff, Mr Okkerse. Mr Okkerse deposed:

3. On Wednesday 25 September 2013 I inquired by telephone of the Registrar of the Employment Court at Wellington as to whether or not the Defendant had filed with the Court Statement of Defence in answer to the Amended Statements of Claim dated 20 March 2013 filed by the Plaintiff in proceedings WRC 17/04 and WRC 19/05 and whether or not the Defendant had filed with the Court a Statement of Defence in answer to the 4th Amended Statement of Claim dated 20 March 2013 filed by the Plaintiff in proceedings WRC 08/09.

4. In response to that telephone inquiry the Registrar advised me that no such Statements of Defence by the Defendant were able to be found on the Court files in respect of the relevant proceedings.

5. On Thursday 26 September 2013 I attended the Registry of the Employment Court at Wellington and inspected the Court's files in respect of WRC 17/04, WRC 19/05 and WRC 08/09 in order to determine if the Statements of Defence referred to in paragraph 3 above were able to be located on those files.

6. I was not able to locate on any of the Court files I inspected any Statements of Defence by the Defendant in answer to the Plaintiff's amended Statements of Claim dated 20 March 2013 in proceedings WRC 17/04 and WRC 19/05 nor was I able to locate a Statement of Defence by the Defendant in answer to the Plaintiff's 4th Amended Statement of Claim dated 20 March 2013 filed by the Plaintiff in proceedings WRC 08/09.

[9] In his written submissions in support of the application, counsel for the plaintiff, Mr Fletcher, submitted, that: "The Court should put the defendant's failure to file statements of defence into two contexts, immediate and broad." In the "immediate context" counsel submitted, inter alia, that the defendant's failure to file a statement of defence, "was during a period in which it relentlessly pursued the plaintiff to provide security for the defendant's costs in the almost unheard of sum of \$200,000, a continuation of the defendant's transparent strategy to defeat the plaintiff's claims by wearing her down and making it financially impossible for her to maintain her claims." In the "broader context" Mr Fletcher submitted that the defendant's failure to file statements of defence is, "the most fundamental error a defendant can make," and that it "is deemed to have admitted all the allegations in the statements of claim, including that the defendant engaged in a fraud on the Court to cover up its unlawful actions."

The defendant's case

[10] In his notice of opposition dated 20 September 2013, counsel for the defendant, Mr Quigg, submitted (correctly) that the Court order dated 1 March 2013 had not specifically required the defendant to file further statements of defence. Mr Quigg went on to submit:

4. The Court ought not countenance the approach taken by the plaintiff having regard to the history of these proceedings which includes the defendant filing multiple statements of defence within the specified time in response to orders of this Court.

[11] Mr Quigg produced a detailed "Pleadings Chronology" recording the dates on which statements of claim and amended statements of claim had been filed over the years, along with the dates of filing of statements of defence and amended statements of defence. Mr Quigg also sought to rely on s 189 of the Act, which deals with the Court's equity and good conscience jurisdiction.

Discussion

[12] The obligation to file a statement of defence is provided for in reg 19 of the Regulations which states:

19 Obligation to file statement of defence

- (1) Except where the registrar of the court or a Judge otherwise orders, every defendant who intends to defend any proceedings in the court must file a statement of defence with the Registrar of the court.
- (2) The statement of defence must be filed,—
 - (a) for a defendant served in New Zealand, within 30 clear days after the date of the service of the statement of claim on the defendant;
or
 - (b) for an overseas party, within the time specified in regulation 31E.
- (3) Every defendant must, as soon as practicable after filing a statement of defence under subclause (1), serve a copy of the statement of defence on the plaintiff.
- (4) Every defendant who fails to comply with subclauses (1) to (3) may defend the proceedings only with the leave of the court.
- (5) Except where a Judge otherwise directs, nothing in this regulation applies to any action that has been accorded urgency under clause 21 of Schedule 3 of the Act or the court's equity and good conscience jurisdiction.

[13] No authorities were cited by either counsel, but on the issue of pleadings, I accept the statement of Associate Judge Faire in *Drummond v Commissioner of Inland Revenue*:⁶

... the primary purpose of pleadings is to define the issues and thereby to inform the parties in advance of the case they have to meet and to enable them to take steps to deal with it.

[14] In determining any issue centred on the pleadings, the principal criterion must always be the overall justice of the case.

[15] The essence of Mr Quigg's submissions was that the defendant had made its position clear in previous statements of defence filed in the respective proceedings and there was no requirement either in the Regulations or in the Court order of 1 March 2013 for the defendant to file an amended statement of defence. In his submissions, Mr Fletcher sought to rely on the High Court Rules which specifically provide in r 7.77 for the filing of amended pleadings but, as is pointed out in *McGechan on Procedure*:⁷

... Where no fresh cause of action is introduced, an amended statement of defence is optional. In determining whether such should be filed, two tests are generally applied:

- (a) Are the allegations in the statement of claim as amended still sufficiently answered by the existing statement of defence? As stated by Edwards J in *Crawford v Ryland (No 2)* (1899) 18 NZLR 714 (SC) at 716:

On the other hand, if the amendment made by the amended statement of claim is of a formal character, and the statement of defence filed to the original statement of claim does sufficiently give notice of the matters upon which the defendant intends to rely as an answer to the case as made by the amended statement of claim, it is unnecessary to file a statement of defence to the amended statement of claim.

- (b) ...

[16] After hearing argument on 30 September 2013, I agreed, at the request of Mr Fletcher, to defer the commencement of the hearing until 1 October 2013. I also directed Mr Quigg to serve amended statements of defence to the amended statements of claim before 5.00 pm on 30 September 2013. My order was complied

⁶ [2012] NZHC 2028 at [15].

⁷ Andrew Beck and others *McGechan on Procedure* (online looseleaf ed. Brookers) at [HC 7.77.08].

with. The amended statements of defence were filed by 3.00 pm on 30 September. They disclose no new matters apart from a statutory limitation pleading in WRC 17/04. The plaintiff would have needed to deal with this issue in any event. The other amendments are inconsequential.

[17] Significantly, the plaintiff has not pleaded any prejudice. As I indicated to Mr Fletcher during oral argument, that is not surprising given that, according to Mr Okkerse's affidavit, plaintiff's counsel only began making inquiries about the statement of defence situation three working days prior to the commencement of the hearing. By that time I would have thought that most of the preparation for the anticipated six-week hearing would have been completed.

[18] In any event I am satisfied, for the reasons stated, that it was not necessary for amended statements of defence to be filed in response to the latest amended statements of claim. Moreover in all the circumstances, had it been necessary, I would have granted leave pursuant to reg 19 of the Regulations for the defendant to defend each of the proceedings embodied in this consolidated action.

[19] As amended statements of defence have now been filed and served they will be treated as the relevant pleadings.

[20] Consistently with my other interlocutory judgments, costs are reserved.

A D Ford
Judge

Judgment signed at 1.00 pm on 1 October 2013