

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
WELLINGTON**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TE WHANGANUI-A-TARA**

**[2019] NZEmpC 27  
EMPC 367/2017**

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

AND IN THE MATTER OF an application for substituted service

BETWEEN BARBARA BUCKETT & ASSOCIATES  
T/A BUCKETT LAW  
Plaintiff

AND TOTOĀ CAROLINE FARANI  
Defendant

Hearing: 26 February 2019 (by telephone conference call)  
(Heard at Wellington)

Appearances: B Buckett, counsel for plaintiff

Judgment: 13 March 2019

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**INTERLOCUTORY JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS  
[Application for substituted service]**

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[1] This matter commenced life in the Employment Relations Authority as a claim against an ex-employee for breach of the employment agreement, the statutory duty of good faith, and breach of the implied term of fidelity. The Authority dismissed the plaintiff's claim finding that there was no employment relationship problem.<sup>1</sup> The Court of Appeal's judgment in *JP Morgan Chase Bank NA v Lewis* was cited in support of this conclusion.<sup>2</sup> The plaintiff filed a challenge to the determination. There have

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<sup>1</sup> *Barbara Buckett & Associates t/a Buckett Law v Farani* [2017] NZERA Wellington 110.

<sup>2</sup> *JP Morgan Chase Bank NA v Lewis* [2015] NZCA 255, [2015] 3 NZLR 618, [2015] ERNZ 37.

been difficulties serving the statement of claim on the proposed defendant, and an application for substituted service has been made.

[2] The Court may make an order for substituted service in the circumstances set out in r 6.8 of the High Court Rules 2016.<sup>3</sup> It provides that:

**6.8 Substituted service**

- (1) If reasonable efforts have been made to serve a document by a method permitted or required under these rules, and either the document has come to the knowledge of the person to be served or it cannot be promptly served, the court may—
  - (a) direct—
    - (i) that instead of service, specified steps be taken that are likely to bring the document to the notice of the person to be served; and
    - (ii) that the document be treated as served on the happening of a specified event, or on the expiry of a specified time:

...

[3] It is clear, based on the affidavit evidence before the Court, that the difficulties the plaintiff has experienced with serving the statement of claim track earlier difficulties serving her in the context of the Authority proceedings. Those difficulties led the Authority to make an order for substituted service, via newspaper advertisement.

[4] Based on the evidence before the Court and after hearing from Ms Buckett in support of the application, I am satisfied that reasonable steps have been taken to serve a copy of the statement of claim on the proposed defendant and that those steps have been unsuccessful. Ms Buckett proposes two methods of substituted service – newspaper advertisement in the local daily newspaper in Sydney, Australia (where the proposed defendant is believed to be residing), and by leaving a copy of the statement of claim at the proposed defendant’s family home in New Zealand. I am satisfied that the proposed methods of service are likely to bring the statement of claim to the attention of the proposed defendant and that they are appropriate in the circumstances.

[5] Finally, issues as to the delay between the filing of the statement of claim and the filing of an application for substituted service were raised during the course of the

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<sup>3</sup> Via the Employment Court Regulations 2000, reg 6(2)(a)(ii).

telephone conference. After hearing from counsel, I am satisfied (by a narrow margin) that, while unfortunate, the delay does not of itself warrant the exercise of my discretion against granting the application for substituted service.

[6] I am satisfied that it is in the broader interests of justice that the application be granted and the following orders are made:

- (a) The Registrar is to allocate a half day fixture for the hearing of the challenge.
- (b) The plaintiff will, as soon as reasonably practicable, cause publication of notice of the proceedings in the main daily papers in Sydney, Australia, and the Dominion Post in Wellington, New Zealand. The notice is to include advice of the date, time and place of hearing and that any document, including any subsequent judgment of the Court in these proceedings, can be obtained from the Wellington registry and, in the case of a judgment, will be available on the Court's website. The plaintiff will also serve the proceedings by leaving a copy of the statement of claim, marked for the proposed defendant's attention, at the family home (the address of which appears in the affidavit of Mr Moeke dated 16 January 2019), with the same advice about the hearing and judgments issued.
- (c) The plaintiff will file an affidavit of service within seven days of notice being published and service at the family home.

Christina Inglis  
Chief Judge

Judgment signed at 2.30 pm on 13 March 2019