

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2020] NZEmpC 207
EMPC 193/2020**

IN THE MATTER OF	a challenge to a determination of the Employment Relationships Authority
AND IN THE MATTER OF	an application for leave to file amended pleadings
BETWEEN	EASTERN BAYS HOSPICE TRUST T/A DOVE HOSPICE Plaintiff
AND	VALERIE RAGGETT, CATHERINE TALBOT, FRANCELLE BURNS, NICHOLAS SWAN, HELENA NATHAN AND MICHELLE HOOD Defendants

Hearing: 25 November 2020 (by telephone)

Appearances: R Towner, counsel for plaintiff
P Pa'u, advocate for defendants

Judgment: 25 November 2020

**INTERLOCUTORY JUDGMENT (NO 2)
OF CHIEF JUDGE CHRISTINA INGLIS
(Application for leave to file amended pleadings)**

[1] The plaintiff has applied for leave to file an amended statement of claim. Leave is required because the case has been set down for hearing, on 10 and 11 December 2020. The application is opposed by the defendants, essentially on the ground of prejudice. I heard further from the representatives during the course of a telephone hearing this morning.

[2] The application is focussed on introducing a pleading in respect of waiver, namely that the defendants waived their right to complain about a reduction in their hours to 80 per cent because they allegedly failed to object to the proposal when it was raised by the plaintiff. Waiver had not featured when the matter was investigated by the Employment Relations Authority, nor did it feature in the original statement of claim that was filed. The plaintiff says that it is important that leave be granted to enable the real controversy to come before the Court for resolution.¹

[3] An application for leave to amend a statement of claim raises three key considerations:²

- Is granting leave in the interests of justice?
- Will leave significantly prejudice the other party?
- Will leave cause significant delay?

[4] The defendants say that, if leave is granted, they will need additional time to prepare evidence in relation to the issue of waiver; and to locate relevant documentation. The current timetabling orders (which have the defendants filing and serving their briefs of evidence by 4.00 pm tomorrow, 26 November 2020) will not be able to be met if leave is granted and nor will there be sufficient time before the hearing, which is two weeks away.

[5] I accept that amending the pleading as proposed would enable the real issues between the parties to be resolved. The issue of waiver is one of some significance, including beyond the parties to these proceedings. I accept, too, that the grant of leave would cause some difficulties for the defendants, in terms of the current hearing dates, having regard to the need to prepare evidence and file a statement of defence. Such

¹ *G L Baker Ltd v Medway Building and Supplies Ltd* [1958] 1 WLR 1216 (CA).

² See the discussion in Matthew Casey and others *Annotated High Court Rules* (4th ed, LexisNexis, Wellington, 2018) at [HCR7.776] and the cases cited therein.

difficulties can, as Mr Pa'u accepted, be dealt with by extending the current timetabling orders. However, while the issue of prejudice in respect of the application for leave could have been dealt with on this basis, a further issue was then identified by the representatives – namely, the adequacy of the hearing time that had been allocated. The representatives agreed that the hearing would now likely take four days, possibly five, having regard to the expanded issues, and that the current hearing dates should be vacated and the matter adjourned to the first available dates in 2021.

[6] In the circumstances, I am satisfied that it is just to grant leave. Any prejudice to the defendants can adequately be addressed. The application to amend the statement of claim is granted, subject to the following conditions:

- (a) The draft amended statement of claim is to be treated as having been filed on today's date;
- (b) Any statement of defence to the amended statement of claim is to be filed and served by 4 pm, 7 December 2020;
- (c) Any briefs of evidence for the defendants are to be filed and served by 4 pm, 7 December 2020;
- (d) The representatives are to confer about any additional documents for the bundle of documents and file a supplementary bundle of documents with the Court by 4 pm, 16 December 2020;
- (e) Any briefs of evidence in reply are to be filed and served by 4 pm, 16 December 2020;
- (f) The Registrar is to liaise with the representatives, and counsel for the interveners, with a view to allocating five days for hearing before the full Court on the first available dates in 2021;
- (g) The hearing dates of 10 and 11 December 2020 are vacated;

(h) Costs on this application are reserved.

Christina Inglis
Chief Judge

Judgment signed at 3:25 pm on 25 November 2020