

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

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2022] NZEmpC 103
EMPC 85/2022**

IN THE MATTER OF a declaration under s 6(5) of the
Employment Relations Act 2000

AND IN THE MATTER OF an application to access Court documents

BETWEEN SERENITY PILGRIM, ANNA
COURAGE, ROSE STANDTRUE,
CRYSTAL LOYAL, PEARL VALOR
AND VIRGINIA COURAGE
Plaintiffs

AND THE ATTORNEY-GENERAL SUED
ON BEHALF OF THE MINISTRY OF
BUSINESS, INNOVATION AND
EMPLOYMENT, LABOUR
INSPECTORATE
First Defendant

AND HOWARD TEMPLE, FERVENT
STEDFAST, ENOCH UPRIGHT,
SAMUEL VALOR, FAITHFUL
PILGRIM, NOAH HOPEFUL AND
STEPHEN STANDFAST
Second Defendants

Hearing: On the papers

Appearances: B P Henry, D Gates and S Patterson, counsel for plaintiffs
J Catran and A Piaggi, counsel for first defendant
S G Wilson, J Hurren and H Rossie, counsel for second
defendants
R Kirkness, counsel to assist the Court

Judgment: 16 June 2022

**INTERLOCUTORY JUDGMENT (NO 3)
OF CHIEF JUDGE CHRISTINA INGLIS
(Application to access Court documents)**

Introduction

[1] An application has been made by a journalist from New Zealand Media and Entertainment (NZME), a media outlet, to access certain documents on the Court file, namely the statement of claim, any affidavits filed by the plaintiffs, and an affirmation from a former Police detective which was referred to in an interlocutory judgment dated 23 March 2022.

[2] NZME wishes to cover the upcoming hearing of this matter and it is said that access to the documentation sought will ensure a full understanding of the case the plaintiffs have brought, its context and background. It is further said that the plaintiffs' claim is of "extreme public interest and the community has a right to know the full details of the claims the plaintiffs are making,"

[3] I directed that the application be provided to the parties. The plaintiffs have no objection to the application and abide the decision of the Court, as does the Attorney-General. The second defendants (who I will refer to as the Gloriavale defendants) oppose the application.

Analysis

[4] The approach to applications of this sort is now well established and can be summarised as follows. The Employment Relations Act 2000 does not deal with access to documents held on the Court file, nor do the Employment Court Regulations 2000. The Senior Courts (Access to Court Documents) Rules 2017 (the Rules) have been applied by way of reference to reg 6 of the Regulations and/or by way of helpful analogy.¹

¹ *Prasad v LSG Sky Chefs New Zealand Ltd* [2017] NZEmpC 160 at [4].

[5] The Rules are made under the Senior Courts Act 2016. Section 173 of that Act provides that “[a]ny person may have access to court information of a senior court to the extent provided by, and in accordance with, rules of court.” Schedule 2 provides that court information includes the formal court record, the court file, information relating to particular cases and electronic records of hearings. The material sought in this case is on the court file. A person may ask to access any document under r 11 of the Rules.

[6] The principle of open justice is fundamental.² The principle may need to be departed from in certain circumstances when it is in the interests of justice to do so.

[7] Rule 12 specifies a range of matters that must be considered when determining an application for access. It provides:

12 Matters to be considered

In determining a request for access under rule 11, the Judge must consider the nature of, and the reasons given for, the request and take into account each of the following matters that is relevant to the request or any objection to the request:

- (a) the orderly and fair administration of justice:
...
- (c) the right to bring and defend civil proceedings without the disclosure of any more information about the private lives of individuals, or matters that are commercially sensitive, than is necessary to satisfy the principle of open justice:
- (d) the protection of other confidentiality and privacy interests (including those of children and other vulnerable members of the community) and any privilege held by, or available to, any person:
- (e) the principle of open justice (including the encouragement of fair and accurate reporting of, and comment on, court hearings and decisions):
- (f) the freedom to seek, receive, and impart information:
...

² *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310 at [2] in relation to the principle generally; and, in relation to access to Court documents, see the discussion in *Commissioner of Police v Doyle* [2017] NZHC 3049; and *Berry v Crimson Consulting Ltd* [2017] NZHC 3026 upheld on appeal in *Berry v Crimson Consulting Ltd* [2018] NZCA 460.

- (h) any other matter that the Judge thinks appropriate.

[8] Rule 13 deals with the approach to balancing the matters to be considered under r 12:

13 Approach to balancing matters considered

In applying rule 12, the Judge must have regard to the following:

- (a) before the substantive hearing, the protection of confidentiality and privacy interests and the orderly and fair administration of justice may require that access to documents be limited:
- (b) during the substantive hearing, open justice has—
 - (i) greater weight than at other stages of the proceeding; and
 - (ii) greater weight in relation to documents relied on in the hearing than other documents:
- (c) after the substantive hearing,—
 - (i) open justice has greater weight in relation to documents that have been relied on in a determination than other documents; but
 - (ii) the protection of confidentiality and privacy interests has greater weight than would be the case during the substantive hearing.

[9] The first point is that no affidavits from the plaintiffs have been filed in these proceedings. Access cannot be provided to documents that do not exist. The plaintiffs have filed a statement of claim. It contains allegations which have not yet been tested and which relate to sensitive matters involving the private lives of individuals within the Gloriavale Community. As the Court of Appeal has observed, access to pleadings is less likely to be granted where the pleadings contain matters unduly intruding into the private lives of individuals.³

[10] While the confidentiality and privacy interests of the plaintiffs might otherwise carry weight, the fact is that they are not opposed to the application. I do however

³ *Greymouth Petroleum Holdings Ltd v Empresa Nacional Del Petróleo* [2017] NZCA 490, [2017] NZAR 1617 at [25].

have regard to the confidentiality and privacy interests of the second defendants. I accept that the material sought by the applicant contains sensitive and untested allegations against them.

[11] Aside from the interests of the second defendants, significant privacy interests of non-parties are engaged, most particularly in respect of individuals referred to in the affirmation filed in these proceedings. Mr Wilson, counsel for the Gloriavale defendants, says that the matters referred to are sensitive, untested and likely (if reported on) to cause significant distress. I accept that is so.

[12] As the Rules make clear, the timing of the application is also relevant. In this case the application comes before the hearing. At such a stage consideration relating to the protection of confidentiality and privacy interests, and the orderly and fair administration of justice, may require that access to documents be limited.⁴ The importance of public scrutiny is less, as the Court is not hearing and resolving the dispute and there is no guarantee that the case will go to a hearing at all. The parties “are entitled to the protection of confidentiality and privacy within reasonable limits, given that they have not at that point aired the dispute in public. ...”⁵ Consideration of these interests weighs against the grant of access to the statement of claim and the affirmation.

[13] There is clearly a significant public interest in these proceedings, and a degree of interlocutory activity has resulted in judgments which are publicly available. The point is that there is already a degree of knowledge in the public domain about the nature of the dispute, the broad nature of the plaintiffs’ claims, the general nature of the allegations made and the reasons why urgency was granted to ensure that the hearing was brought on promptly. All of this will no doubt assist in providing background information to support informed, fair and balanced reporting of the hearing.

⁴ Rule 13(b)(ii).

⁵ *Greymouth Petroleum Holdings Ltd*, above n 3, at [25]. See too *GFD I LLP v Melview (Kawarau Falls Station) Investments Ltd (in rec)* [2012] NZHC 677 at [16]; *BNZ Investments Ltd v Commissioner of Inland Revenue* (2009) 20 PRNZ 311 (HC) at [33]; *Hawkes Bay Regional Council v Herbert Construction Company Ltd* [2015] NZHC 1060 at [6].

[14] The Gloriavale defendants submit that the recent media attention has not been balanced and has led to difficulties, including harassment of current members of the Community. Further media attention is likely, it is said, to make the situation worse. As counsel readily acknowledges, media attention is not of itself a reason to decline an application (nor could it be). However, I accept that providing access to the affirmation and statement of claim in the current context and at this stage may give an incomplete and potentially inaccurate picture, which would not be consistent with encouraging fair and accurate reporting.⁶

Result

[15] Standing back and considering the matters in rr 12 and 13, and the authorities I have referred to, I do not consider it to be in the interests of justice to grant the application. The application is accordingly declined.

Christina Inglis
Chief Judge

Judgment signed at 4.45 pm on 16 June 2022

⁶ Rule 12(e). See too *Berry*, above n 2.