

**ORDER PROHIBITING PUBLICATION OF NAME OR IDENTIFYING
PARTICULARS OF THE PLAINTIFF**

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

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

**[2023] NZEmpC 46
EMPC 20/2023**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for interim non- publication order
BETWEEN	MW Plaintiff
AND	SPIGA LIMITED Defendant

Hearing: On the papers
Appearances: A Mapu, advocate for plaintiff
Judgment: 28 March 2023

**INTERLOCUTORY JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS
(Application for interim non-publication order)**

[1] The plaintiff has filed a statement of claim in the Court challenging a determination of the Employment Relations Authority.¹ In its determination the Authority declined an application for non-publication of the plaintiff's name and identifying details. It is that aspect of the Authority's determination which is the focus of the plaintiff's non-de novo challenge.

¹ *MW v Spiga Ltd* [2022] NZERA 661 (Member Urlich).

[2] On 24 March 2023, the plaintiff’s advocate drew to the Court’s attention what was described as an “informal interim non-publication order” made by the Authority. It appears from correspondence put before the Court that the Authority made the order on 26 January 2023 at the request of the plaintiff, and not opposed by the defendant. Mr Mapu now seeks an interim non-publication order from the Court.

[3] The defendant does not wish to take an active part in these proceedings and has been excused from further attendances. Counsel has been appointed to assist the Court, but I do not consider it necessary to hear from them on the plaintiff’s interlocutory application.

[4] The Court has a broad power under sch 3 cl 12 of the Employment Relations Act 2000 (the Act) to order that “...the name of any party ... not be published,” subject to such conditions as the court thinks fit”. While the discretion is broad, it must be exercised consistently with applicable principles. The principle of open justice is a principle of fundamental importance. It forms the starting point for determining whether the circumstances of a particular case justify an order for non-publication.² A party applying for such an order must establish that sound reasons exist for the making of an order of non-publication, displacing the presumption in favour of open justice.³

[5] In the present circumstances sound reasons exist for the making of the order sought. The fact that interim non-publication orders have been made in the Authority (albeit informally) weighs in favour of orders being made in this case. The Authority’s order appears to have been based on preserving the plaintiff’s position pending the outcome of the challenge process. It would undermine the Authority’s order and be prejudicial to the plaintiff’s position not to make the order sought. And there are no countervailing considerations that appear to be relevant to the weighing exercise the Court is required to undertake.

² *Erceg v Erceg [Publication restrictions]* [2016] NZSC 135, [2017] 1 NZLR 310; and *Crimson Consulting Ltd v Berry* [2017] NZEmpC 94, [2017] ERNZ 511.

³ *Erceg*, above n 2, at [13].

[6] I am satisfied that the interests of justice require that an interim non-publication order be made. There is accordingly an order prohibiting publication of the plaintiff's name and identifying details pending further order of this Court.

[7] The plaintiff is to be referred to by the randomly selected letters "MW".

[8] No issue of costs arises.

Christina Inglis
Chief Judge

Judgment signed at 4.15 pm on 28 March 2023