

**IN THE EMPLOYMENT COURT  
CHRISTCHURCH**

**[2014] NZEmpC 109  
CRC 2/14**

IN THE MATTER OF      the removal of a proceeding by the  
   Employment Relations Authority

BETWEEN                DOUGLAS KARL HIXON (LABOUR  
   INSPECTOR)  
   First Plaintiff

AND                        MARCIA JOY COLLINS  
   Second Plaintiff

AND                        JUSTIN CAMPBELL  
   First Defendant

AND                        DEAN EGGERS  
   Second Defendant

AND                        PAULA CAMPBELL  
   Third Defendant

Hearing:                On papers filed on 25 June 2014

Court:                    Chief Judge GL Colgan  
   Judge Christina Inglis

Appearances:        M Urlich and S Carr, counsel for plaintiffs  
   No appearance for defendants  
   MSR Palmer QC, counsel assisting the Court

Judgment:             26 June 2014

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**INTERLOCUTORY JUDGMENT OF THE FULL COURT**

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[1]      The questions now requiring urgent decision are, first, whether there should be made what is known as an order for substituted service of the proceedings on the first and third defendants and, second, what should be the consequence of that first

decision affecting the scheduled fixture of this case by the full Court<sup>1</sup> less than a week hence.

[2] Service of originating proceedings in this Court is governed by reg 28(2)(a) of the Employment Court Regulations 2000. That provides that where an opposing party has not given an address for service, service of proceedings can be effected in a number of ways. Under reg 28(2)(a)(i) this may be by what is known colloquially as personal service. Under reg 28(2)(a)(ii) service may be effected by sending the papers by registered post to the last known residence or place of business of the person to be served. Regulation 28(2)(a)(iii) applies where the person to be served is a company or other corporation or organisation but that is not the case here. Finally, under reg 28(2)(a)(iv) the Court is empowered to make what is called colloquially an order for substituted service. This provides that service may be effected “in such other manner as the Registrar of the court or a Judge directs ...”.

[3] Unlike in the Employment Relations Authority (the Authority), service of proceedings is the responsibility of the parties and, except when sending out fixture notices, not the Court.

[4] This is a proceeding removed by the Authority under s 178 of the Employment Relations Act 2000 for hearing at first instance.<sup>2</sup> It concerns an important legal issue about the definition of the word “employer” under the Wages Protection Act 1983. The first plaintiff (then the only plaintiff), a Labour Inspector, was required to serve the defendants and did so. No defendant took any step to defend, or otherwise participate in, the proceeding.

[5] At the first hearing in Wellington on 28 April 2014, the Labour Inspector sought to proceed on an amended statement of claim the content of which had been signalled by the Labour Inspector before the hearing. The Court had then joined Marcia Collins as a second plaintiff. That was as a result of the Labour Inspector’s apprehension that he might not be empowered in law to bring all of the causes of action contained in the statement of claim. Ms Collins was an employee and it

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<sup>1</sup> For the purpose of issuing this judgment which is required urgently, we are a quorum of two Judges pursuant to s 210(1) of the Employment Relations Act 2000.

<sup>2</sup> *Hixon (Labour Inspector) v Campbell* [2014] NZERA Christchurch 4.

seems clear that if the Labour Inspector is not entitled to bring some of the causes of action, Ms Collins will be. That question of the Labour Inspector's powers to bring proceedings is still a live one in the case.

[6] By an oral ruling given in Court on 28 April 2013, we directed the Labour Inspector to serve on the defendants the amended statement of claim which had not, by then, been filed. We took the view that the defendants should be entitled to know of the changed nature of the case against them and have the usual opportunity to participate in the proceeding if they wished to do so. We then adjourned the hearing to a date to be fixed by the Registrar which is now Tuesday 1 July 2014. Had the defendants been served reasonably promptly after 28 April 2014, they would have had 30 days within which to take steps in the proceeding.

[7] Ms Urlich for the plaintiffs advises the Court that the second defendant, Dean Eggers, was served personally on 16 June 2014, and Ms Urlich has said that she will be able to prove service on Mr Eggers. He has not yet taken any step in the proceeding although his time for doing so is still running. There have, however, been additional difficulties with service on the first and third defendants who are husband and wife. They reside in Taupo but the Labour Inspector's process server has been unable to locate them to effect personal service on them.

[8] In a telephone discussion with counsel, Ms Urlich, the first defendant, Mr Campbell, provided a Post Office Box address to which he said the Labour Inspector could send the amended proceedings. No other address or facilities for the service of the proceedings was provided and Ms Urlich advises that she obtained the impression from the discussion that Mr and Mrs Campbell did not intend to participate in the hearing. A Post Office Box address (for animate persons) is not a place at which proceedings can be served under reg 28(2)(a)(ii) which we summarised at [2] above.

[9] The plaintiffs now ask the Court to treat the sending on 19 June 2014 of the documents to the Post Office Box in Taupo nominated by Mr Campbell as service of the proceedings on Mr and Mrs Campbell on the date that the documents were sent to that Post Office Box.

[10] Alternatively Ms Urlich invites us to treat service of the proceedings on Mr Eggers as constituting service on Mr and Mrs Campbell. We decline to do so. There is no evidence of such a close association between these persons now that we could assume that the proceedings would thereby come to the Campbells' notice.

[11] The defendants participated in the proceeding when it was before the Authority and before its removal to this Court. So it is not, in that sense, a proceeding which is unknown to them. That strengthens the inference that Mr and Mrs Campbell are aware of what has happened and is to happen in this Court but have elected not to participate in it beyond their initial opposition to the orders sought by the Labour Inspector that they conveyed to the Authority.

[12] We are satisfied, on the submissions<sup>3</sup> put before us, that reasonable efforts have been made to serve Mr and Mrs Campbell but these have been unsuccessful. We are satisfied that the proceedings will have come to their notice by sending them to the Post Office Box as Mr Campbell requested.

[13] We make an order accordingly, that is that service was effected on the first and third defendants on 21 June 2014, the date of probable receipt of the documents in the Post Office Box. The one condition that will attach to this order for substituted service is that the Labour Inspector must send forthwith a copy of this interlocutory judgment to both Mr and Mrs Campbell at the same Post Office Box in Taupo. If Mr Eggers takes any step in the proceeding a copy of this judgment will also have to be served on him.

[14] The order for substituted service just made does not, however, allow the hearing to take place next Tuesday 1 July 2014 as scheduled. That is because the 30 days, which all defendants have to take any step in the proceeding, will not have expired by then. Pursuant to our order for substituted service, the 30 days within which the first and third defendants may take any steps in the proceedings will expire on 21 July 2014.

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<sup>3</sup> Although we do not doubt the truth of what counsel has told us, we consider that these matters should be established by evidence on affidavit rather than by memoranda of counsel.

[15] In the circumstances, there is, regrettably, no alternative but to vacate again the hearing in Wellington on 1 July 2014.

[16] The new date of hearing in the proceedings will be Monday 11 August 2014 in the Employment Court at Wellington commencing at 10 am. The Labour Inspector will need to prove service of the proceedings on all defendants and should do so as soon as possible to avoid the possibility of any further adjournment of the proceedings.

GL Colgan  
Chief Judge  
for the full Court

Judgment signed at 1.15 pm on Thursday 26 June 2014