

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2015] NZEmpC 60  
EMPC 117/2015**

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

AND IN THE MATTER      of an application for stay of proceedings

BETWEEN                      TGP  
   Plaintiff

AND                              TFE  
   First defendant

AND                              SDI  
   Second defendant

AND                              TDI  
   Third defendant

Hearing:                      On papers filed on 7 May 2015

Appearances:                A Twaddle, counsel for plaintiff

Judgment:                    8 May 2015

---

**INTERLOCUTORY JUDGMENT OF CHIEF JUDGE G L COLGAN**

---

[1]      These are my reasons for making two interim orders in this proceeding yesterday without notice to the defendants. All parties are referred to by the acronyms in the entitling as a result of the interim order for non-publication of their names or other particulars leading to their identities, made on the late afternoon of 7 May 2015.

[2]      The plaintiff is a health professional in a field that is governed by legislation including provision for a professional disciplinary body to which complaints can and, in some circumstances, must be made. The plaintiff was employed by TFE in his professional capacity. SDI and TDI were, at material times, office holders in the

first defendant company whom the plaintiff alleges were parties to the actions of the first defendant which constituted his employment relationship problem.

[3] Serious allegations were made against the plaintiff and were the subject of an investigation by the first defendant. In the course of that investigation, the parties agreed to attempt to resolve their differences by negotiation and settlement. This was achieved with the assistance of lawyers and a written settlement agreement was entered into. There is reference in the record of settlement to s 149 of the Employment Relations Act 2000 (the Act). Among the terms of settlement were the following:

4. These terms and reasons for settlement will remain, so far as the law allows, confidential between the parties. The parties will not disclose to any other person or entity that such an agreement has been reached or any of the circumstances/allegations leading to the Employee's resignation.
5. The parties agree that neither will take any further action in respect of the employment relationship or termination thereof. This includes, but is not limited to, making a complaint to the Police, the [relevant professional association] or raising a personal grievance.

[4] The settlement was signed by the parties on 27 June 2014. It was then forwarded to the Mediation Service of the Ministry of Business, Innovation and Employment for certification by a mediator pursuant to s 149(1) and (3) of the Act.

[5] It appears that the settlement was mislaid within the Mediation Service's offices and was only located when there was a later request from the plaintiff's solicitor that it not be executed by a mediator. It had not been executed or certified by a mediator to that point, and the plaintiff's solicitor's request was adhered to.

[6] In the meantime, the plaintiff says, the defendants (or some of them) had lodged a complaint of professional misconduct against the plaintiff with the relevant professional body. The defendants are also said to have distributed widely among other relevant employers, serious allegations of misconduct and criminal offending against the plaintiff, with a strong recommendation that he not be employed by other enterprises operating in the field.

[7] The plaintiff became aware of these actions taken by the defendants and lodged proceedings (an employment relationship problem) with the Authority arising out of the breach by the defendants of the settlement agreement, seeking a direction to mediation and, subsequently, an order prohibiting publication of any information that might identify him.

[8] The defendants then applied to the Authority to strike out the plaintiff's proceedings although the Authority elected to deal with that application as one to the effect that the parties should not be directed by the Authority to mediation.

[9] On 24 February 2015 the Authority declined the defendants' objection to mediation and made a direction under s 159 of the Act that the parties attend mediation.<sup>1</sup> In that same determination the Authority said that the plaintiff had not furnished sufficient evidence to support an application for non-publication but gave him a further opportunity to do so. The Authority directed that its determination, directing the parties to mediation, not be published for the period of 28 days from 24 February 2015.

[10] The plaintiff then filed an application seeking non-publication orders, which was dealt with on the papers filed. On 9 April 2015 the Authority declined to make any non-publication orders but directed that both its determination on that date and the earlier determination not be released publicly until the expiry of 28 days after 9 April 2015.<sup>2</sup>

[11] On 7 May 2015 the plaintiff filed a challenge to the Authority's second determination (refusal of non-publication) and sought a stay of the orders made in that determination.

[12] As I recorded by Minute issued that afternoon, it appeared that the 28-day grace period was about to expire. By the Minute that I directed be served on counsel for the defendants in the Authority, and on the Authority and the Authority Member concerned, I made interim non-publication orders as follows:

---

<sup>1</sup> [2015] NZERA Auckland 60.

<sup>2</sup> [2015] NZERA Auckland 105.

... I make an order pursuant to cl 12 of sch 3 to the Employment Relations Act 2000 that no person is to publish either the identities of the parties to this proceeding and to the proceedings before the Authority from which this is a challenge, or any information which may tend to identify any of those parties.

[13] I also made an interim order staying the Authority's first determination that the matter should go to mediation, until the defendants have had an opportunity to instruct counsel and participate in an early telephone directions conference.

[14] As I have noted previously, the defendants' complaint to the relevant professional body is still before it. In addition, it appears that there are now defamation proceedings which have been filed in the High Court, the current status of which is unknown to this Court.

GL Colgan  
Chief Judge

Judgment signed at 10.15 am on Friday 8 May 2015