IN THE EMPLOYMENT COURT
CHRISTCHURCH

[2016] NZEmpC 179
EMPC 346/2016

IN THE MATTER OF	an application for injunction
BETWEEN	LYTTELTON PORT COMPANY LIMITED Plaintiff
AND	THE RAIL AND MARITIME TRANSPORT UNION INC First Defendant
AND	MARITIME UNION OF NEW ZEALAND INC Second Defendant

Hearing:	28 December 2016 (by telephone conference)
Appearances:	R Towner, counsel for plaintiff G Davenport, counsel for first defendant L Ryder, counsel for second defendant
Judgment:	29 December 2016

JUDGMENT OF JUDGE B A CORKILL

Introduction

[1] Two issues relating to a proposed picket at the Port of Lyttelton require urgent resolution.

[2] The Maritime Union of New Zealand Inc (MUNZ) has given notice of two strikes to the Lyttelton Port Co Ltd (LPC). The first is to take place this coming weekend (30 December 2016 and 1 January 2017)[1] and the second will take place

[1] In proceedings relating to the strike proposals of MUNZ heard last week, it was accepted that this notice was valid: *Lyttelton Port Co Ltd v Maritime Union of New Zealand Inc* [2016] NZEmpC 173 at [15] and [83].

the following weekend (7 and 8 January 2017). In this proceeding, there is no issue as to the legality of the proposed strikes.

[3] MUNZ intends to conduct pickets during these strikes at the Port. Members of a second union, the Rail and Maritime Transport Union Inc (RMTU), who also work at the Port of Lyttelton, are concerned about potential health and safety issues arising from the proposed pickets. RMTU has advised its members that they have the right to refuse to cross the picket line if they believe there is a risk to health and safety in doing so.

[4] LPC now seeks urgent injunctions. The first application seeks to restrain RMTU and its members being involved in the proposed strike action, and to resume employment and perform duties as instructed.

[5] The second seeks to restrain MUNZ and its members from participating in picketing which is intended to interfere, or would have the effect of interfering, with the employment of any LPC employee; and to advise its members not to participate in the proposed picketing.

[6] LPC must establish that it has an arguable case as to the alleged unlawful conduct in respect of each defendant. Then it must establish that the balance of convenience is in favour of granting relief. Thirdly, even if the first two tests are satisfied, the Court must determine where the overall justice of the case may lie from the date when an interim order may be made until trial.

[7] LPC's application was filed on 23 December 2016. The next day I held a telephone directions conference with counsel to schedule an urgent timetable. Affidavits for all parties have been filed, together with submissions. Given the circumstances, the hearing was conducted by telephone. Because of the urgency with which this proceeding has been heard and now determined, my reasons for judgment will be brief.

The parties' cases in outline

[8] For LPC it is asserted that the proposed picket line would result in strike action by members of RMTU who are scheduled to work during the strike period. It is asserted that those workers are likely to refuse to cross the picket line and undertake their normal work for LPC. Such a strike would be unlawful, first, because it would not relate to bargaining for a collective agreement that would bind RMTU members since they are covered by a current collective agreement; and, second, statutory requirements as to notice of a strike relating to an essential service would not have been complied with. Nor could strike action by members of the RMTU be justified on the grounds of safety or health.

[9] In respect of its case against MUNZ, LPC asserts that the picket line would be unlawful because it would be obstructive rather than informational in nature; it would interfere with LPC's employment agreements and would induce breaches of them; and it would interfere with LPC's commercial contracts with clients such as shipping lines. These claims are based on the torts of interference with contractual relations and/or unlawful interference with trade or business.

[10] With regard to both applications, LPC asserts that it would face significant disruptions to its operations, which would affect freight distribution, work schedules at the Port, and shipping schedules. This would potentially cause serious financial consequences which are difficult to quantify. LPC asserts that these factors, together with the interests of third parties and the public interest, lead to a conclusion that the balance of convenience and overall justice strongly favours it.

[11] The case for RMTU is that there is no strike, as defined under the Employment Relations Act 2000 (the Act). In particular, there is no combination, agreement, common understanding or concerted action which has been entered into by RMTU, or its members, with MUNZ. Alternatively, employees have a right to refuse what they reasonably consider to be unsafe work. RMTU could not be criticised for telling its members not to place themselves or others in danger, but that is a matter for individual employees. In these circumstances, the balance of convenience and overall justice strongly favours RMTU.

[12] For MUNZ, it is contended that there is no arguable case because s 99(3) of the Act provides that where the Court is satisfied that proceedings result from, or relate to, participation in a lawful strike, the Court must dismiss proceedings which are founded on tort. It says that LPC's claim that the picket is unlawful is speculative because picketing has not yet commenced; and there is no evidence in any event that picketing would amount to a tortious act as alleged by LPC. On the question of balance of convenience and overall justice, it is contended that LPC has, at best, a weak arguable case.

[13] It is contended that MUNZ is entitled to exercise its rights to picket at common law and pursuant to the New Zealand Bill of Rights Act 1990; that the consequences alleged by LPC are overstated; that LPC has not acted in a timely way to deal with this issue; that it has put in place contingency plans to minimise the effects of the lawful strike so that picketing would not add to limitations which LPC already faces; that if an injunction were granted against RMTU, there could be no tortious claim against MUNZ; and/or if an injunction against RMTU was granted, LPC's contingency plans would not be disrupted.

[14] With regard to overall justice, it is again submitted that the plaintiff has a weak arguable case. Should an injunction be granted against RMTU then there would be no actionable claim against MUNZ and no justification for preventing MUNZ and its members from exercising their right to picket. The rights of MUNZ and its members should, in the circumstances, be paramount.

Arguable case: RMTU

[15] The first issue that arises with regard to the position of RMTU relates to whether a refusal by members of that Union to cross the MUNZ picket line would be a strike, as is asserted by LPC; would there be concerted action between the members of the two Unions?

[16] Mr Davenport, counsel for RMTU, relied on evidence from Mr Heiner Benecke, RMTU's Lyttelton Branch Secretary, to the effect that members have been told that they cannot join the picket and the dispute in question is not theirs. Counsel

also relied on two affidavits which were filed from health and safety representatives who said that each of them had made their own choice not to cross the picket line, as a health and safety issue. This was because, they said, emotions run high during strikes, so that they would be concerned for their health if the picket line were crossed; and that RMTU members live in the same community and work in the same place as MUNZ members, so that the crossing of a picket line could result in repercussions and reprisals. This evidence replicated statements in a notice issued by RMTU to its members, which emphasised the right of an individual employee to make his own decision. Mr Davenport submitted that all this evidence made it clear that any decisions not to work were for individual members.

[17] Mr Towner, counsel for LPC, relied on evidence from Ms Sally Williams, Industrial Relations Manager for the company, which recorded that Mr John Kerr, South Island Organiser for RMTU, had said "you will have to [injunct] us to get us across the line". Mr Towner placed emphasis on the use of the plural. He also referred to other evidence of Ms Williams who stated that from her knowledge of the Unions involved, there was an unwritten rule (or a principle of union solidarity) which they observed, to the effect that a member of one union would not cross another union's picket line. She stated that even if the picket was a peaceful picket, RMTU members would not cross MUNZ's picket line so as to report and undertake their normal work. She said that the mere fact that a MUNZ picket line would be established at the entry to the Port would induce or persuade members of RMTU not to cross it. That would be an industrial objective of the picket line.

[18] Mr Towner also referred to a finding of Laurenson J in *Ports of Auckland Ltd v The New Zealand Seafarers Industrial Union of Workers* in which reference was made to the fact that this "convention" of union solidarity still prevails, although possibly to a lesser extent than previously.[2] In summary, Mr Towner submitted that there would be concerted action.

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[2] *Ports of Auckland Ltd v The New Zealand Seafarers Industrial Union of Workers* CL40/97, HC Auckland, 26 November 1998, at 27.

[19] This Court dealt with a similar issue in *Port of Tauranga Ltd v Rail and Maritime Transport Union Inc*.[3] There, it was submitted, as here, that refusals to cross a picket line (which had already occurred in that instance) had been the action of individual employees who had made up their own minds so that there was therefore no concerted action as required by s 81(1)(b) of the Act. The Court held that there was evidence that the refusals were as a result of directions by the Union, so that the issue of whether there was in fact a strike, was arguable.

[20] The totality of the evidence which is before this Court supports a similar conclusion. A stop work meeting was held with members of RMTU on 21 December 2016, at which it appears that the possibility of a strike by MUNZ was discussed. A notice was also sent to RMTU members, explaining that it would be legitimate for them not to cross the line, providing they did so on the basis of health and safety grounds. Mr Kerr stated that members would not cross the line unless they were injuncted. I infer that multiple members of RMTU would be likely to withdraw their labour because of this advice from their Union.

[21] I am satisfied, for interim injunction purposes, that there is an arguable case as to the possibility of concerted action and thus a strike as defined in the Act.

[22] It follows from that conclusion that the strike would be unlawful, given the fact that RMTU is not currently bargaining with LPC, and given the absence of a compliant notice in respect of an essential service, as required by s 90 of the Act.

[23] However, in response to that possible conclusion, Mr Davenport argued that s 84 of the Act would apply. It states:

> **84 Lawful strikes and lockouts on grounds of safety or health**
> Participation in a strike or lockout is lawful if the employees who strike have, or the employer who locks out has, reasonable grounds for believing that the strike or lockout is justified on the grounds of safety or health.

[24] Mr Davenport submitted strongly that there were genuine concerns on health and safety grounds. He said that members of RMTU were concerned not only as to

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[3] *Port of Tauranga Ltd v Rail and Maritime Transport Union Inc* [2012] NZEmpC 41.

what might occur at the picket line itself, but also within the relatively small community in which they, and members of MUNZ, live. He said that his instructions were that members were concerned not only about the impacts on themselves, but also on their partners and children.

[25] In *Lyttelton Port Co Ltd v Rail and Maritime Transport Union Inc*,[4] I reviewed the provisions of s 84, and its related provision s 85(2) which deals with the issue of onus, in this way:

> [25] The question of onus is addressed in the Act. Section 85(2) provides that where a party alleges that participation in a strike is lawful by virtue of s 84, that party has the burden of proving that allegation. The defendant does not have to prove, however, that the action was justified. Rather, there must be proof that the person or persons taking the action believed it was justified, and that the belief was held on reasonable grounds.
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> [26] LPC submitted that the section requires the Union to establish that there was and is an imminent danger to workers, or that they would be at significant risk of serious harm. This submission was based on dicta of the Court in *Tranz Rail Ltd v Rosson*.
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> [27] On some occasions, an "imminent danger" test has been regarded as appropriate.
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> [28] However, I respectfully agree with Judge Finnigan's observations in *Fletcher Development and Construction Ltd v New Zealand Labourers IUOW* that whilst such a test may be of assistance in some instances, the prime test is the language of the section itself. He commented:
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> > … [T]he test may or may not be an 'imminent danger' test in one or other case … [T]he prime test is set out in [s 84] … [S]ometimes an imminent danger test will satisfy that test, but there are other tests as well which may satisfy it…
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> [29] In *Griffin v Attorney-General*, Chief Judge Goddard, when dealing with an issue where prison officers had taken strike action and believed that a shift was "undermanned," remarked:
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> > [There] was perhaps too much emphasis on the absence of evidence of danger that was imminent instead of on danger that was real as opposed to farfetched but in practical terms the difference is one of degree and may not be significant.
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> [30] Also relevant is s 28A of the Health and Safety in Employment Act 1992 (the HSE Act). Sub-section (5) provides that an employee may not refuse to do work that, because of its nature, inherently or usually carries an understood risk of serious harm, unless the risk has materially increased beyond the understood risk.

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[4] *Lyttelton Port Co Ltd v Rail and Maritime Transport Union Inc* [2014] NZEmpC 236, [2014] ERNZ 800.

> [31] This provision is relevant in the present context, because both the employer and employees have relevant obligations and rights with regard to this workplace arising from that statute; and s 28A(8) of the HSE Act specifically provides a cross-reference to the Act, when it states, for the avoidance of doubt, that a question about the application of s 28A to a particular situation is deemed to be an employment relationship problem for the purposes of the Act.
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> [32] Section 84 must be construed according to not only its text, but also its purpose. An understanding of purpose is assisted by s 28A(5) of the HSE Act. I approach the question of threshold for the purposes of this case by considering whether the risk has materially increased beyond the understood risk. The assessment of risk made by employees must be real and not far-fetched, and must be sufficiently serious as to justify participation in a strike.
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> (footnotes omitted)

[26] Mr Davenport also referred to the right of a worker to cease or refuse to carry out unsafe work, as provided for in s 83 of the Health and Safety at Work Act 2015. Such a right arises where a worker believes that carrying out the work would expose him or any other person to a serious health and safety risk, arising from an immediate or imminent exposure to a hazard. Whilst that provision is of course significant, the focus for present purposes must be on s 84 of the Employment Relations Act, for it is that section which specifically provides for a health and safety justification to strike.

[27] I turn to consider the evidence which is relevant to a s 84 assessment in this case. I accept that the beliefs expressed by the witnesses who gave evidence in this case are entirely genuine, and should be respected. However, it appears that those concerns focus more on reactions which could occur in the wider community, rather than on the possibility of confrontation on a picket line, although this possibility is implied. The express concerns should not be diminished, but they must be correctly understood.

[28] That community impacts are the primary focus of the matters which are described as health and safety issues is endorsed by the evidence of the two health and safety representatives who state that they have decided, already, not to cross the proposed picket line; their evidence did not state that a decision of this nature would turn on the circumstances which pertained at the time when they may have to consider crossing it.

[29] Also relevant is the evidence of Mr Tristan Ormsby, President of the MUNZ Lyttelton Branch, which stated that the proposed picket would be:

> [a] … soft picket which means that it will not in any way be obstructive of any individuals, trucks, cars or other equipment or personnel who wish to gain access to the Port or to leave … I can confirm categorically that the proposed picket will be a peaceful picket. We intend to hold up placards. We are not going to hand out leaflets or engage the public or other Port employees.

[30] There is something of a dissonance between the cases advanced for each Union. RMTU says there will be health and safety risks; MUNZ says the proposed action will be peaceful.

[31] I conclude that the evidence is not, at this stage, sufficient to establish an arguable case that there would be an "immediate and significant risk" to RMTU's members, in order to justify the "extreme step" of striking.[5] It is unlikely that RMTU would be able to show reasonable justification for a strike on the grounds of health and safety as required by the provisions of s 84. That said, the concerns that have been expressed about possible consequences in the community must be acknowledged, and I shall return to this issue later.

[32] I also observe that while these particular concerns exist, I have also found that a factor in the RMTU position is union solidarity.

[33] LPC has accordingly established an arguable case that RMTU and its members would participate in an illegal strike.

Arguable case: MUNZ

[34] Ms Ryder, counsel for MUNZ, argued that there is a significant jurisdictional impediment to the making of orders against MUNZ, as sought. This submission was based on s 99 of the Act which provides:

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[5] *Tranz Rail Ltd v Rosson* WC30/03, EmpC Wellington, 30 September 2003 at [22]-[23] per Judge Shaw.

> **99 Jurisdiction of court in relation to torts**
> (1) The court has full and exclusive jurisdiction to hear and determine proceedings founded on tort—
> (a) issued against a party to a strike or lockout that is threatened, is occurring, or has occurred, and that have resulted from or are related to that strike or lockout:
> (b) issued against any person in respect of picketing related to a strike or lockout.
> (2) No other court has jurisdiction to hear and determine any action or proceedings founded on tort—
> (a) resulting from or related to a strike or lockout:
> (b) in respect of any picketing related to a strike or lockout.
> (3) Where any action or proceedings founded on tort are commenced in the court, and the court is satisfied that the proceedings resulted from or related to participation in a strike or lockout that is lawful under section 83 or section 84,—
> (a) the court must dismiss those proceedings; and
> (b) no proceedings founded on tort and resulting from or related to that strike or lockout may be commenced in the District Court or the High Court.

[35] First, counsel submitted that s 99(1)(b) refers to "picketing", but not to "threatened picketing". This was to be contrasted with the language used in s 99(1)(a) which did refer to a threatened strike or lockout.

[36] Mr Towner, in response, submitted that the answer was provided by s 100 which states:

> **100 Jurisdiction of court in relation to injunctions**
> (1) The court has full and exclusive jurisdiction to hear and determine any proceedings issued for the grant of an injunction—
> …
> (b) to stop any picketing related to a strike or lockout or to prevent any threatened picketing related to a strike or lockout; …

[37] He submitted that the word "threatened", as used in s 100(1)(b), needed to be read into s 99(1)(b). Otherwise, he submitted, s 99(1)(b) would be unduly limited in its scope; in essence he contended that such an outcome could not have been intended.

[38] For interim injunction purposes, I conclude that Mr Towner's submission on this point is arguable.

[39] The next jurisdictional point raised by Ms Ryder related to s 99(3). She said that the proceeding brought by LPC was one founded on tort (involving claims of inducing a breach of contract and/or interference with contractual relations), and that it resulted from or related to participation in a lawful strike. Accordingly, the Court had to dismiss the proceeding. She said that the purpose of the subsection was to ensure that where there was a lawful strike, there would not be economic consequences which would cut across that right.

[40] Mr Towner responded to this submission by arguing that, in the present case, the focus needed to be on the striking activity of members of RMTU. It was that activity which underpins the tortious claims brought by LPC against MUNZ. Because RMTU members would not be participating in a legal strike, the subsection would not come into play. Consequently, s 99(1) gave the Court jurisdiction to hear and determine LPC's proceeding, as one founded on tort.

[41] Again, for interim injunction purposes, I find that this construction is arguable.

[42] Next, Ms Ryder submitted that the Union has a right to picket in support of a lawful strike. She stated that the common law has long recognised this right, and that it would be lawful as long as the MUNZ members taking part in the picket behaved appropriately. I agree.

[43] She also submitted that MUNZ members were entitled to the protections provided by ss 14, 16 and 17 of the New Zealand Bill of Rights Act 1990, which relate to freedom of expression, peaceful assembly and the right to associate. As she stated, these are important protections for people engaged in picketing.

[44] These principles are enshrined in the time-honoured statement of Lord Denning MR, who, in *Hubbard v Pitt*, stated:[6]

> Picketing is lawful so long as it is done merely to obtain or communicate information, or peacefully to persuade; and is not such as to submit any other person to any kind of constraint or restriction of his personal freedom.

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6 *Hubbard v Pitt* [1976] 1 QB 142.

[45] The relevant principles were conveniently summarised by the Public Issues Committee of the Auckland District Law Society when it described the general rights which picketers may not infringe if their picket is to remain lawful, as follows:[7]

> (a) If the picket is on a highway, footpath or footway, it must not obstruct others in passing or re-passing on that highway, footpath or footway.
>
> (b) If the picket is on private property, it must not infringe the law of trespass.
>
> (c) The picket must not involve any criminal activity.
>
> (d) The picket must not involve the commission of a tort, whether the tort of inducing a breach of contract (such as a contract of employment) or the tort of nuisance, public or private.

[46] The evidence as to the proposed picketing by members of MUNZ must accordingly be evaluated against these principles.

[47] Ms Ryder submitted that it was premature to evaluate the legitimacy of the proposed picketing, when it had yet to occur; this submission was based on dicta of Chief Judge Colgan in *Port of Napier Ltd v Maritime Union of New Zealand Inc*.[8] However, the Court does have jurisdiction to consider granting relief in respect of a threatened picket, and it must do so on the basis of such evidence as may be placed before the Court. A party who brings an application to the Court which has an insufficient evidential basis will run a risk of relief being denied, or perhaps the application being adjourned. In the present case, Mr Towner urged the Court to make findings on the basis of the evidence before it. In the interests of providing certainty to the parties now, I proceed accordingly.

[48] Ms Ryder also submitted that there was no evidence that the picketing in the present case would constitute tortious action. She said that such an act would need

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7 "Picketing" [1981] NZLJ 116 at 118.

8 *Port of Napier Ltd v Maritime Union of New Zealand Inc* [2007] ERNZ 826 (EC) at [45], [52] and [55].

to take place before a claim could be made. However, courts frequently grant injunctive relief to restrain conduct that would otherwise infringe the law.

[49] The real question in the present case is whether LPC has established that there is an arguable case as to the allegations on which its claim is based.[9] LPC asserts that the picket line would be unlawful because it would:

(a) be obstructive rather than informational in nature;

(b) interfere with the plaintiff's employment agreements with its employees;

(c) induce breaches of those employment agreements; and

(d) interfere with the plaintiff's commercial contracts with its clients such as shipping lines.[10]

[50] Ms Ryder relies strongly on the evidence which I summarised earlier from Mr Ormsby, to the effect that the proposed picket will be peaceful.

[51] He went on to say that approximately 50 MUNZ members would be present at the picket on each shift, and that MUNZ intends to picket at various access points to the Port. He said he would be present. There may well be issues as to whether one person could adequately manage so many persons at multiple sites over a period of many hours.

[52] However, the Court also has the evidence relating to the significant health and safety concerns held by members of RMTU, and the fact that, as it was put in the RMTU notice to its members, emotions can run high during strikes.

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9 The allegations were derived from the High Court decision of *Liquigas Ltd v New Plymouth Waterfront Workers IUOW* HC New Plymouth A2/84, 10 February 1984.

10 These are the key prerequisites for establishing illegal conduct for the purposes of the tort of inducing breach of contract: *Ports of Auckland Ltd*, above n 2, at 13-23; and the tort of unlawful interference with business interests: *McIntyre v Bianchi* [1992] 3 ERNZ 1057 (HC) at 1104.

[53] I take into account the fact that bargaining has continued over many months; members of MUNZ are not satisfied that LPC has been fair in its offers.

[54] The dynamics which can apply in such circumstances were well summarised by Chief Judge Colgan in the *Port of Napier* case, as follows:[11]

> [54] Industrial picketing may include lawful and unlawful elements and it is difficult to tell, prospectively and in an information vacuum, whether a particular picket will be lawful or may escalate into illegality. What Mr Hanson describes as an *"informational picket"* seeks to persuade, by information and reasoned discourse, other persons to support the views of the picketers and to manifest that support by bringing economic pressure to bear on the target of the picket, in this case PONL. Such a strategy is protected by rights of free speech and to assemble and protest peacefully. Most pickets start out with these intentions and some continue in that fashion. Experience shows that others, although beginning with the best of intentions, degenerate for various reasons and sometimes involve criminal law and civil injunctive sanctions.

[55] The Court cannot ignore the possibility that in this case picketing could get out of hand, as is contended for by LPC and, to some extent, by RMTU.

[56] The authorities, with regard to the nature of an alleged interference or inducement, were reviewed by Laurenson J in the *Ports of Auckland Ltd* decision.[12] In short, the Court has to look at the practical reality of the situation.

[57] Although each of the Unions asserts that neither has communicated with the other as to the possibility of joint action, that is not necessarily the test. What will suffice is some element of "pressure, persuasion or procuration".[13]

[58] A relevant circumstance in the present case suggests that the withdrawal of labour will only occur when a picket is being operated. That is, the withdrawal of labour would be a direct consequence of the picket, since it will not occur at other times. That suggests that the practical reality is that RMTU members would be pressured or persuaded not to cross the proposed picket line; that it will in that case be more than informational; and these consequences will accordingly give rise to

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11 *Port of Napier Ltd*, above n 8 at [54].
12 *Ports of Auckland Ltd*, above n 2, at 25-26.
13 *DC Thomson & Co Ltd v Deakin* [1952] Ch 646 at 686 per Lord Evershed MR.

breaches of relevant employment agreements, and interfere with LPC's commercial contracts.

[59] I find, for interim injunction purposes, that LPC has established an arguable case that the torts of inducement of breach of contract and unlawful interference with business interests are established.

Balance of convenience/overall justice

[60] Detailed evidence has been placed before the Court supporting the contention that if Port employees, other than those who are members of MUNZ, do not work as required, there will be significant disruption to Port facilities, stevedoring companies, ship owners, freight distribution, the work schedule at the Port, and shipping schedules.

[61] Although Ms Ryder argued that this evidence was exaggerated, there is no evidence to the contrary.

[62] It is proposed that the pickets will operate over the next two weekends. On the face of it, there are likely to be shipping operations which would be affected by the proposed pickets in those periods, which will give rise to disruption.

[63] I also accept the evidence that there are potentially serious financial consequences for LPC, being losses which it could not reasonably be expected to be mitigated given the timeframes involved. Given that a component of any losses will relate to damage to reputation, those losses may well be difficult to quantify.

[64] I must also take into account the interest of third parties – those who have contracts with LPC and/or who operate at Lyttelton Port, as well as members of the public who would be affected by the proposed disruptions, whether as consignors, consignees, or businesses and members of the public who are waiting to receive imports or send exports.

[65] Against that I must weigh the rights of the Unions involved. As far as RMTU and its members are concerned, there is no obvious prejudice to the granting of an interim order; indeed, it could serve to alleviate their concerns.

[66] As far as MUNZ and its members are concerned, the granting of an interim order will curtail to some extent their ability to provide information about the current status of bargaining; but, as was submitted, MUNZ is nonetheless able to publicise its concerns in multiple other ways, and to picket peacefully elsewhere.

[67] Ms Ryder submitted that the Court could consider granting an injunction against RMTU and its members, so that there could then be no tortious claim against MUNZ, and no necessity for an order against it. But the converse could equally apply: an order against MUNZ and its members would obviate the necessity for an order against RMTU and its members. Indeed, it may well be the case that if one party only were to be injuncted, it should be the party which proposes to picket.

[68] I am satisfied that the factors in favour of the grant of interim relief against each Union outweigh the potential prejudice which would be suffered by each Union and its members.

[69] Turning to overall justice, I consider that orders should be granted against each Union. I am not persuaded that relief should be declined so that arguably illegal activities could be conducted. I also consider that the making of orders may serve to relieve the wider community impacts to which I referred earlier.

Result

[70] LPC has established its entitlement to interim relief.

[71] Mr Davenport submitted that if an order was to be made in respect of RMTU, the terms of the order should involve the least restrictive intervention. Ms Ryder submitted that were the Court to make an order, it should do so with regard to a form of order which preserves the right to picket peacefully. To some extent, the form of order proposed by Mr Towner will achieve that end, but not at the Port of Lyttelton.

As I have already indicated, MUNZ and its members will be able to publicise the concerns which have led them to strike. Having regard to other decisions of this Court on such topics, I consider the form of the proposed orders to be appropriate. That said, I propose to reserve leave for any party to apply for amendments to the form of the Court's orders, if need be.

[72] I order that, until further order of the Court:

(a) RMTU (and its officers, employees and agents) are to refrain from being party to, or directing, encouraging, or inducing its members employed by LPC to participate in strike action at the Port of Lyttelton, and are required to advise those members employed by LPC not to participate in any strike action at the Port of Lyttelton and to undertake their employment and perform their duties as instructed by LPC, notwithstanding any picket action by MUNZ and its members.

(b) MUNZ (and its officers, employees and agents) are to refrain from being party to, or directing, encouraging, or inducing its members employed by LPC to participate in picketing at the Port of Lyttelton which is intended to interfere or may have the effect of interfering with the employment of any of LPC's employees, and be required to advise its members employed by LPC not to participate in picketing at the Port of Lyttelton.

[73] Any party may apply for leave in respect of the form of these orders on 24 hours' notice.

[74] The evidence placed before the Court referred to the fact that following the judgment of this Court last week, bargaining resumed between LPC and MUNZ, but this was unsuccessful. I wish to consider the possibility of directing the parties to attend further mediation so as to advance their unresolved bargaining. Counsel for LPC and MUNZ are to advise the Registrar by 5 January 2017 as to their views on that possibility.

[75] Any party requiring a substantive hearing with regard to this proceeding is to file a memorandum to that effect by 31 January 2017.

[76] I reserve costs; any application in that regard is to be filed and served by the same date. I will then timetable any such application for disposition.

BA Corkill
Judge

Judgment signed at 2.45 pm on 29 December 2016