

**IN THE EMPLOYMENT COURT  
CHRISTCHURCH**

**[2017] NZEmpC 59  
EMPC 181/2016**

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

AND IN THE MATTER    of an application by the defendant to vary  
   non-publication orders

BETWEEN                      Y LIMITED  
   Plaintiff

AND                                MS X  
   Defendant

Hearing:                      On the papers filed on 19 and 24 April, and 9 May 2017

Appearances:              No appearance for plaintiff  
   P Tucker, counsel for defendant

Judgment:                    18 May 2017

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**JUDGMENT (NO 2) OF JUDGE K G SMITH**

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**Introduction**

[1] Ms X has applied to vary a non-publication order made as part of a consent judgment granted by me on 8 November 2016.<sup>1</sup>

[2] In that judgment I ordered as follows:

- a) Pursuant to s 183(2) of the Employment Relations Act 2000 (the Act), and by consent, the determination of the Employment Relations Authority is set aside.
- b) It is acknowledged that each party acted in good faith at all times.

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<sup>1</sup> *Y Ltd v Ms X* [2016] NZEmpC 146.

- c) The remaining terms of settlement between the parties are recorded in a confidential settlement agreement, which I direct is now the subject of an order for non-publication pursuant to cl 12(2) of Sch 3 of the Act.
- d) There will be an order prohibiting from publication the names of the parties and any information that may lead to the identification of them.

[3] What has necessitated this application is that Ms X has issued proceedings in the High Court seeking to liquidate Y Ltd following a failure by that company to pay her as required by the agreement reached at the settlement conference as referred to in the judgment.<sup>2</sup>

### **Discussion**

[4] This application has been served on the company. On 28 April 2017 I issued a Minute to the parties, in which Y Ltd was required to take steps, no later than 4 May 2017, if it intended to oppose the application. No steps have been taken by the company.

[5] An absolute requirement of liquidation proceedings in the High Court is that public notice has to be given of the application.<sup>3</sup> Ms X is concerned that publicly notifying those proceedings is prevented because of the order for non-publication.

[6] Ms Tucker, counsel for Ms X, has filed submissions in support of this application. She submitted that the parties cannot have intended the non-publication order to be a barrier to prevent recovery of the amount agreed in settlement. While the parties requested judgment by consent to facilitate their settlement, including non-publication of their names and the terms of settlement, by oversight they did not turn their attention to potential complications if enforcement or recovery action was required.

[7] Ms Tucker's next submission was that the Court retains its ability to vary the non-publication order by exercising the equity and good conscience jurisdiction in s 189(1) of the Employment Relations Act 2000 (the Act). She also submitted that, if

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<sup>2</sup> At [3].

<sup>3</sup> High Court Rules, r 31.9.

necessary, that jurisdiction extended so far as to reinstating or recalling the proceeding so that this application could be considered.<sup>4</sup>

[8] I agree that the interests of justice would not be served if the non-publication order could have an unintended consequence of preventing recovery action to obtain the agreed settlement; at least one aspect of that order only came about because of the settlement now being enforced. I accept Ms Tucker's proposition that there ought to be no technical barrier to initiating recovery proceedings caused by the non-publication order in those circumstances.

[9] I am satisfied that s 189 of the Act is sufficiently broadly drafted that it enables me to grant this application to facilitate recovery proceedings. Had it been necessary I would have granted this application relying on the slip rule in r 11.10 of the High Court Rules.<sup>5</sup> While I have decided to grant the application, this judgment remains anonymised to allow for the possibility that payment may be made before public notice of the liquidation proceeding is given.

[10] I consider the best course of action, to enable Ms X to take whatever steps she considers appropriate, is to amend the orders contained in [3](c) and (d) of the judgment so that those orders do not apply to public notification of liquidation proceedings, or to any other recovery proceedings that Ms X may take. Leave is reserved to apply to seek further or other orders if required.

[11] Orders are made accordingly.

[12] Costs are reserved.

KG Smith  
Judge

Judgment signed at 2.30 pm on 18 May 2017

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<sup>4</sup> Relying on such cases as *Wellington and Taranaki Caretakers, Cleaners, Lift Attendants and Watchmen's IUOW v St Mark's School* [1983] ACJ 825 (AC).

<sup>5</sup> Relying on Employment Court Regulations 2000, reg 6.