

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2018] NZEmpC 64
EMPC 257/2016**

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

AND IN THE MATTER of an application to adjourn Employment
Court proceedings

AND IN THE MATTER of an application for a non-publication order

BETWEEN ANDRE NEL
Plaintiff

AND ASB BANK LIMITED
Defendant

EMPC 303/2016

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

AND BETWEEN ASB BANK LIMITED
Plaintiff

AND ANDRE NEL
Defendant

Hearing: (on a joint memorandum dated 1 June 2018 and a telephone
directions conference with counsel on 5 June 2018)

Appearances: C W Stewart, counsel for A Nel
S Dench, counsel for ASB Bank Limited

Judgment: 6 June 2018

**INTERLOCUTORY JUDGMENT (NO 4) OF JUDGE B A CORKILL:
APPLICATION TO ADJOURN EMPLOYMENT COURT PROCEEDING
AND FOR NON-PUBLICATION ORDERS**

Introduction

[1] The substantive hearing of the above proceedings was scheduled to commence on 5 June 2018.

[2] On 1 June 2018, counsel filed a joint memorandum, informing the Court that a settlement agreement had been entered into between the parties. The Court was requested to adjourn the proceedings for a short period, in anticipation of counsel being able to confirm that the matter had been finally resolved. I vacated the fixture, and have now had the opportunity of discussing all outstanding issues with counsel in a telephone directions conference. It is clear that the proceedings will not now proceed to trial.

Application for non-publication order in respect of Ms B's intended evidence

[3] In interlocutory judgment (No 3), I referred to certain intended evidence which Ms B would give to the Court, which referred to events in which Mr Nel had allegedly been involved.¹ Mr Nel strongly challenged the reliability of that evidence.

[4] Now, a joint application has been made by the parties that certain passages in that judgment should be the subject of a non-publication order, because that evidence which was to have been disputed by Mr Nel will not now be tested; it would accordingly be unfair for the assertions to be published. Counsel are also agreed that there are, in addition, a range of personal, family and reputational reasons affecting Mr Nel which strongly support the making of the non-publication order by consent.

[5] I have considered the material involved, and I am satisfied that these grounds meet the threshold for the making of such orders, as discussed by the Court in *Crimson Consulting Ltd v Berry*.² In circumstances where this evidence will not now be the subject of judicial findings, it is appropriate to make the following orders by consent:

¹ *Nel v ASB Bank Ltd (No 3)* [2018] NZEmpC 59.

² *Crimson Consulting Ltd v Berry* [2017] NZEmpC 94 at [96] and [127].

- a) Passages in paras [6], [15] and [17] of the third interlocutory judgment, as identified in the copy of the judgment which is to be issued for publication, are subject to a permanent non-publication order.
- b) The allegations referred to in those paragraphs, as repeated and discussed in the briefs of Ms B, Ms Restall, Mr Reilly and Mr Nel's evidence-in-reply are subject to a permanent non-publication order.
- c) Interlocutory judgments (No 3) and (No 4) will be published simultaneously on 11 June 2018.

Other non-publication orders

[6] The Court has previously made a number of non-publication orders in this case; counsel are agreed that these should now become permanent, a step which I consider is appropriate in the circumstances. I now make permanent non-publication orders in respect of the names of the following persons, as identified in previous judgments and other documents filed for the purposes of these proceedings:

- a) Ms A;³
- b) Ms B;⁴
- c) the persons named in para 42 (d) of the amended statement of claim in EMPC 257/2016;⁵
- d) the person named in para 49 of Mr Vallabh's brief of evidence;⁶
- e) the wife of the plaintiff in EMPC 257/2016; and
- f) the former ASB Bank Ltd employee, as identified at para 7 of Ms Stewart's memorandum of 19 December 2017.

³ Her circumstances are referred to in *Nel v ASB Bank Ltd* [2017] NZEmpC 56 and *Nel v ASB Bank Ltd (No 2)* [2017] NZEmpC 97, (2017) 15 NZELR 159.

⁴ Her circumstances are referred to in *Nel v ASB Bank Ltd (No 3)*, above n 1.

⁵ Their circumstances were to have been considered for disparity purposes.

⁶ The circumstances of this person were to have been considered for disparity purposes.

[7] I also direct that having regard to the nature of confidential information affecting persons who are not parties to these proceedings, the files are not to be searched without leave of a judge having first been given.

Telephone directions conference

[8] There will be a final telephone directions conference with counsel to confirm that the agreed resolution of the parties' settlement agreement has been implemented, at 2.15 pm on 14 June 2018.

B A Corkill
Judge

Judgment signed at 11.30 am on 6 June 2018