

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2021] NZEmpC 101
EMPC 450/2019**

IN THE MATTER OF applications for the exercise of powers under
Part 9A of the Employment Relations Act
2000

AND IN THE MATTER OF an application for discovery against non-
parties

BETWEEN A LABOUR INSPECTOR OF THE
MINISTRY OF BUSINESS, INNOVATION
AND EMPLOYMENT
Plaintiff

AND PRISHA'S HOSPITALITY (2017)
LIMITED TRADING AS ROYAL
CAMBRIDGE INDIAN RESTAURANT
First Defendant

AND AJAY SHARMA
Second Defendant

AND KAVITA SHARMA
Third Defendant

EMPC 453/2019

IN THE MATTER OF applications for the exercise of powers
under Part 9A of the Employment Relations
Act 2000

AND IN THE MATTER OF an application for discovery against non-
parties

BETWEEN A LABOUR INSPECTOR OF THE
MINISTRY OF BUSINESS,
INNOVATION AND EMPLOYMENT
Plaintiff

AND PRISHA'S HOSPITALITY LIMITED
TRADING AS ROQUETTE
RESTAURANT & BAR
First Defendant

AND AJAY SHARMA
Second Defendant

AND KAVITA SHARMA
Third Defendant

Hearing: On the papers

Appearances: S Blick, counsel for plaintiff
P Wicks QC, counsel for defendants

Judgment: 6 July 2021

**INTERLOCUTORY JUDGMENT (NO 3) OF JUDGE J C HOLDEN
(Application for discovery against non-parties)**

[1] The defendants in these proceedings apply for orders for discovery against three non-parties, all of whom were employed by one of the Prisha companies. The orders sought are limited; they relate to audio-recordings between the non-parties and the second defendant in both proceedings, Mr Ajay Sharma.

[2] The grounds upon which the defendants apply for those orders are that the Labour Inspector has disclosed audio recordings of conversations made by the non-parties which are to be relied upon at the hearing in support of the plaintiff's cases, but those audio recordings are not complete recordings of the subject conversations between the non-parties and the second defendant. The defendants therefore seek full copies of the audio recordings, which the defendants expect the non-parties to hold.

[3] The defendants submit that it is in the overall interests of justice that the non-parties disclose the complete audio recordings of the conversations to be relied upon in evidence at the hearing.

[4] Mr Sharma filed an affidavit in support of the application. He attests that he has listened to all of the audio recordings provided and that most of those recordings are not the complete conversation that occurred.

[5] He says that as a matter of fairness the defendants should be provided with the full recording of any conversation.

[6] The three non-parties were served at their email addresses as supplied by the Labour Inspector. No response has been filed by or on behalf of any of the non-parties.

[7] The Court may make orders for non-party discovery pursuant to cl 13 of sch 3 to the Employment Relations Act 2000.

[8] I accept that, in the circumstances, given that the Labour Inspector is relying on the recordings, the full recordings should be provided, assuming they have been retained.

[9] Accordingly, orders are made as follows:

- (a) Abhishek Chawla disclose and produce to the defendants the full audio recording of conversations in respect of which incomplete recordings have been provided to the Labour Inspector.
- (b) Nipun Kalra disclose and produce to the defendants the full audio recording of conversations in respect of which incomplete recordings have been provided to the Labour Inspector.
- (c) Bhuvan Sachdeva¹ disclose and produce to the defendants the full audio recording of conversations in respect of which incomplete recordings have been provided to the Labour Inspector.
- (d) To the extent any such recordings which have been in the possession, custody or control of the three named non-parties are no longer in those

¹ The defendants' documents refer to this person as "Sachdeva Bhuvan", but this order applies either way.

non-parties' possession, custody or control, to disclose both when they were parted with and what became of them.

[10] These orders are to be complied with within 21 days of the date of this judgment.

[11] Costs are reserved.

J C Holden
Judge

Judgment signed at 9.30 am on 6 July 2021