

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

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2022] NZEmpC 35
EMPC 363/2021**

IN THE MATTER OF a declaration under s 6(5) of the Employment Relations
Act 2000

AND IN THE MATTER of an application to access Court documents

BETWEEN HOSEA COURAGE, DANIEL PILGRIM AND LEVI
COURAGE
Plaintiffs

AND THE ATTORNEY-GENERAL sued on behalf of the
Ministry of Business, Innovation and Employment,
Labour Inspectorate
First Defendant

AND HOWARD TEMPLE, FERVENT STEDFAST, ENOCH
UPRIGHT, SAMUEL VALOR, FAITHFUL PILGRIM,
NOAH HOPEFUL AND STEPHEN STANDFAST
Second Defendants

AND FOREST GOLD HONEY LIMITED AND HARVEST
HONEY LIMITED
Third Defendants

AND APETIZA LIMITED
Fourth Defendant

Hearing: On the papers

Appearances: B P Henry, D Gates and A Kenwright, counsel for the plaintiffs
J Catran and A Piaggi, counsel for first defendant
S G Wilson, counsel for second, third and fourth defendants
R Kirkness, counsel to assist the Court

Judgment: 4 March 2022

**INTERLOCUTORY JUDGMENT (NO 7)
OF CHIEF JUDGE CHRISTINA INGLIS
(Application to access Court documents)**

Introduction

[1] An application has been made by a journalist from Stuff Ltd, a media outlet, to access “The written closing submissions of all parties and the full transcript and audio of the meeting between the Pilgrim family and the leaders of Gloriavale.” This material is held on the Court file.

[2] Access is said to be sought in the interests of open justice; the right to free reporting of Employment Court cases; free expression and to write a full, accurate, report on the case.

[3] I directed that the application be provided to the parties and counsel appointed to assist the Court. There is no opposition to the application, and each of the defendants advised that they are content to abide the decision of the Court.

Analysis

[4] The Employment Relations Act 2000 does not deal with access to documents held on the Court file, nor do the Employment Court Regulations 2000. The Senior Courts (Access to Court Documents) Rules 2017 (the Rules) have been applied by way of reference to reg 6 of the Regulations and/or by way of helpful analogy.¹

[5] The Rules are made under the Senior Courts Act 2016. Section 173 of that Act provides that “[a]ny person may have access to court information of a senior court to the extent provided by, and in accordance with, rules of court.” Schedule 2 provides that court information includes the formal court record, the court file, information relating to particular cases and electronic records of hearings. The material sought in this case is on the court file. A person may ask to access any document under r 11.

[6] The principle of open justice is fundamental.² The principle may need to be

¹ *Prasad v LSG Sky Chefs New Zealand Ltd* [2017] NZEmpC 160 at [4].

² *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310 at [2] in relation to the principle generally; and, in relation to access to Court documents, see the discussion in *Commissioner of Police v Doyle* [2017] NZHC 3049; and *Berry v Crimson Consulting Ltd* [2017] NZHC 3026 upheld on appeal in *Berry v Crimson Consulting Ltd* [2018] NZCA 460.

departed from in certain circumstances, when it is in the interests of justice to do so.

[7] Rule 12 of the Rules specifies a range of matters that must be considered when determining an application for access. It provides:

12 Matters to be considered

In determining a request for access under rule 11, the Judge must consider the nature of, and the reasons given for, the request and take into account each of the following matters that is relevant to the request or any objection to the request:

- (a) the orderly and fair administration of justice:
...
- (c) the right to bring and defend civil proceedings without the disclosure of any more information about the private lives of individuals, or matters that are commercially sensitive, than is necessary to satisfy the principle of open justice:
- (d) the protection of other confidentiality and privacy interests (including those of children and other vulnerable members of the community) and any privilege held by, or available to, any person:
- (e) the principle of open justice (including the encouragement of fair and accurate reporting of, and comment on, court hearings and decisions):
- (f) the freedom to seek, receive, and impart information:
...
- (h) any other matter that the Judge thinks appropriate.

[8] Rule 13 deals with the approach to balancing the matters to be considered under r 12:

13 Approach to balancing matters considered

In applying rule 12, the Judge must have regard to the following:

- (a) before the substantive hearing, the protection of confidentiality and privacy interests and the orderly and fair administration of justice may require that access to documents be limited:
- (b) during the substantive hearing, open justice has—

- (i) greater weight than at other stages of the proceeding; and
 - (ii) greater weight in relation to documents relied on in the hearing than other documents:
- (c) after the substantive hearing,—
- (i) open justice has greater weight in relation to documents that have been relied on in a determination than other documents; but
 - (ii) the protection of confidentiality and privacy interests has greater weight than would be the case during the substantive hearing.

[9] The application was advanced yesterday; the position of the parties was advised today. The hearing has concluded this afternoon with judgment reserved. The material to which access is sought was relied on during the course of the hearing, including the transcript of the audio which was put to witnesses and produced as an exhibit.

[10] Open justice favours access being granted. There are no identified confidentiality or privacy interests which might otherwise weigh in the mix.

Result

[11] Standing back and considering the matters in rr 12 and 13, and the authorities I have referred to, I consider it to be in the interests of justice to grant access sought to the documents and audio held on the Court file and do so accordingly.

Christina Inglis
Chief Judge

Judgment signed at 4.05 pm on 4 March 2022