

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

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

**[2022] NZEmpC 170  
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 S Patterson, counsel for plaintiffs  
J Catran and A Piaggi, counsel for first defendant  
S G Wilson, J Hurren and H Rossie, counsel for second, third and  
fourth defendants  
R Kirkness, counsel assisting the Court

Judgment: 15 September 2022

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**INTERLOCUTORY JUDGMENT (NO 13)  
OF CHIEF JUDGE CHRISTINA INGLIS  
(Application to access Court documents)**

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**Introduction**

[1] An application has been made by a law firm, Simpson Grierson, to access various documents on the Court file. Simpson Grierson acts for a third party (Westland Dairy Company Ltd) which is involved in High Court litigation with a limited liability company (Canaan Farming Dairy Ltd). It is said that the company is owned and operated by The Christian Church Community Trust/Gloriavale; is related to the third and fourth defendants in these proceedings; and one of its directors is one of the second defendants. The High Court litigation relates to the cancellation of a milk supply contract.

[2] Documentation on the Court file is said to be relevant to the High Court litigation because:

- one of the grounds of cancellation of the contract was that Canaan Farming Dairy Ltd was not acting in compliance with New Zealand employment law requirements;
- the company was referred to in the judgment of this Court;
- it is a related company to the third and fourth defendants in the proceedings; and
- one of its directors is one of the second defendants in the proceedings.

[3] The documentation to which access is sought is the statement of claim and defence; all briefs of evidence and affidavit evidence referred to or given in Court; and all transcripts of evidence given in Court.

[4] I directed that the application be provided to the parties, along with further material subsequently filed in support of it. The plaintiffs have no objection to the application. The first defendant (the Attorney-General) is opposed to the applicant being granted access to the notes of evidence, briefs of evidence and affidavits insofar as they are related to the Labour Inspectorate. The second to fourth defendants (the Gloriavale defendants) advise that they will abide the decision of the Court but draw attention to the fact that there is a significant amount of material of a sensitive nature contained within the requested documents, and that non-publication orders have been put in place in respect of some of the evidence given.

### **Analysis**

[5] 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.<sup>1</sup>

[6] 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.

[7] The principle of open justice is fundamental.<sup>2</sup> There are, however, other factors to consider, as discussed below, and the principle of open justice may need to be departed from in certain circumstances.

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

<sup>2</sup> *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.

[8] Rule 12 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.

[9] 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.

[10] While there is no presumption in favour of disclosure, the effect of r 13(b) is to accord open justice a higher priority where the application is advanced during the course of the substantive hearing, rather than at other stages (before and after), as Simon France J explained in *Cridge*.<sup>3</sup> The circumstances surrounding the application are also relevant – the principle of open justice is of limited relevance in circumstances where (as here) the application is made by a private party pursuing a commercial purpose.<sup>4</sup>

[11] Access in this case is not being sought during the substantive hearing. It comes after judgment on a preliminary issue (namely whether the plaintiffs were employees). Residual issues as to the identity of the employer and breach have yet to be dealt with by the Court. In these circumstances I am not satisfied that providing access to the material sought will assist in meeting the stated objectives of the application.

[12] Standing back and considering the matters in rr 12 and 13, and the authorities I have referred to, I do not consider it in the interests of justice to grant the application.

[13] No issue of costs arises.

Christina Inglis  
Chief Judge

Judgment signed at 3.15 pm on 15 September 2022

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<sup>3</sup> *Cridge v Studorp Ltd* [2020] NZHC 1836 at [16].

<sup>4</sup> *Schenker AG v Commerce Commission* [2013] NZCA 114, [2015] NZAR 1561 at [38].