

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

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

**[2022] NZEmpC 44
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 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: 15 March 2022

**INTERLOCUTORY JUDGMENT (NO 8)
OF CHIEF JUDGE CHRISTINA INGLIS
(Application to access Court documents)**

Introduction

[1] An application has been made by a journalist from Business Desk, a media outlet, to access all documents on the Court file including but not limited to statements of problem and defence, and supporting evidence, including affidavits and recordings.

[2] Access is said to be sought on the basis that Business Desk is undertaking a major investigation into the charities sector and Gloriavale is one of the charities being researched as part of the investigation.

[3] I directed that the application be provided to the parties. The second, third and fourth defendants are opposed to aspects of the application; the first defendant abides the decision of the Court; and the plaintiffs do not oppose the application.

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.

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

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

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.

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] As I have said, the second, third and fourth defendants oppose the application in part. In this regard Mr Wilson, counsel for the Gloriavale defendants, submits that access ought to be granted to as much material as appropriate but that blanket access would be objectionable. He submits that access should be granted to the pleadings, briefs of evidence read in Court (subject to redactions made pursuant to an order of the Court), the Notes of Evidence, the written submissions of the parties, and the audio recording of the meeting between the Shepherds and Servants and the Pilgrim family. Access to other (unspecified) documentation held on the Court file should be declined.

[10] The application has been advanced after the hearing, and prior to judgment. Access is sought to all documents held on the Court file, including the documents contained within the common bundle. As the rules make clear, open justice has greater weight in relation to documents relied on in the hearing than other documents.³ Mr Wilson makes the point that numerous documents were not referred to by witnesses or counsel during the course of the hearing, and open justice carries less weight in such circumstances. The same point was made in *Electrix Ltd v Fletcher Co Ltd*, where Palmer J declined to allow access to such documents, observing that:⁴

³ Rule 13(b)(ii).

⁴ *Electrix Ltd v Fletcher Construction Co Ltd* [2019] NZHC 2678 at [17].

Finally, Mr Fulton makes a good point about the 5,000 documents in the electronic bundle. They are not all evidence yet and may not become evidence if not referred to by counsel (other than in closing) or by a witness, or objected to and ruled inadmissible. Rule 13(b)(ii) recognises the principle of open justice has less weight in relation to the documents that are not relied upon. I decline blanket access to the documents. If Ms Young, or other media, wish to request any particular documents mentioned in a brief of evidence or submissions, they may do so. I would expect a document would be made available unless counsel advise there is good reason, such as commercial confidentiality, not to do so.

[11] I also see strength in Mr Wilson's submission that the purpose for which access is being sought is relevant to the extent to which the principle of open justice is engaged. In this regard the purpose of the application is not to report on the proceedings but to obtain information for reporting on another aspect of Gloriavale's operations.

[12] 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 pleadings, briefs of evidence read in Court (subject to redactions made pursuant to an order of the Court), the Notes of Evidence, the written submissions of the parties and counsel to assist the Court, and the audio recording and transcript of the meeting between the Shepherds and Servants and the Pilgrim family. Open justice favours access being granted to this documentation, and there are no identified confidentiality or privacy interests which might otherwise weigh against access being granted.

[13] I do not consider it appropriate to grant blanket access to all documents on the Court file and decline to do so. The applicant may, however, apply for access to particular documents mentioned in a brief of evidence or submissions.⁵

Christina Inglis
Chief Judge

Judgment signed at 12.10 pm on 15 March 2022

⁵ Adopting the approach in *Electrix Ltd v Fletcher Construction* at [11] above.