

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

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

**[2022] NZEmpC 51
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: 22 March 2022

**INTERLOCUTORY JUDGMENT (NO 9)
OF CHIEF JUDGE CHRISTINA INGLIS
(Application to access Court documents)**

Introduction

[1] An application has been made by a journalist from New Zealand Media and Entertainment (NZME), a media outlet, to access specified documents on the Court file, being the written closing submissions of all parties and the full transcript and audio of a meeting between the Pilgrim family and the leaders of Gloriavale.

[2] Access is said to be sought on the basis that NZME wishes to cover the case.

[3] I directed that the application be provided to the parties. The plaintiffs have no objection to the application; all defendants will 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.

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 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] Access is being sought to report on the proceedings. The request has been advanced after the hearing, and prior to judgment. As the rules make clear, open justice has greater weight in relation to documents relied on in the hearing than other documents.³ The documentation referred to was relied on at hearing and access to it has already been provided to another media organisation.

[10] 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 the application. The applicant is accordingly to be provided access to 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.

Christina Inglis
Chief Judge

Judgment signed at 5.00 pm on 23 March 2022

³ Rule 13(b)(ii).