

UNDER THE PRIVACY ACT 1993
BETWEEN PHILLIP GIBBONS
PLAINTIFF
AND ARMOUR GUARD
FIRST DEFENDANT
AND LISA THURGOOD
SECOND DEFENDANT
(REMOVED)

AT AUCKLAND

BEFORE:

Martha Roche, Co-Chairperson
Dr SJ Hickey MNZM, Member
Mr BK Neeson JP, Member

REPRESENTATION:

Mr P Gibbons representing himself
Mr I Anderson (General Manager) Mr S Morgan (National Risk Manager) and
Mr J Harnett (National Key Account Manager) for Armour Guard

DATE OF HEARING: heard on the papers

DATE OF DECISION: 29 March 2018

DECISION OF TRIBUNAL STRIKING OUT CLAIM AGAINST ARMOUR GUARD¹

[1] In February 2015, an incident occurred at the Paeroa WINZ office which resulted in Mr Gibbons receiving a criminal conviction. Ms Thurgood, an Armour Guard employee,

¹ [This decision is to be cited as *Gibbons v Armour Guard (Strike-Out Application)* [2018] NZHRRT 10].

was acting as a security officer at the time and made a statement to the Police about the incident which Mr Gibbons believes to be false. Mr Gibbons subsequently telephoned Armour Guard about the incident and the statement made by Ms Thurgood.

[2] In July 2016, Mr Gibbons complained to the Privacy Commissioner that Armour Guard had failed to provide him with audio recordings of the telephone call. The Privacy Commissioner's certificate of investigation named Armour Guard as the sole respondent to the complaint, and recorded the Commissioner's opinion that there had been no interference with Mr Gibbons' privacy as the information requested did not exist.

[3] Mr Gibbons also complained to the Privacy Commissioner that the Ministry of Social Development (MSD) had refused to supply him with CCTV footage of the same incident. The certificate of investigation issued in respect of MSD recorded the Commissioner's opinion that the failure of MSD to provide Mr Gibbons with the footage breached principle 6 and s 42 of the Privacy Act. Mr Gibbons subsequently filed proceedings in the Tribunal against MSD. Those proceedings have been timetabled through to a hearing.

[4] In August 2016, Mr Gibbons filed proceedings with the Tribunal against Armour Guard and its employee, Ms Thurgood. In the statement of claim, he claimed that Armour Guard and/or their officers had made untrue allegations against him concerning their contact with him on 24 and 25 February 2016, that he was subsequently convicted of threatening behaviour, and that he had asked for CCTV proof of his interaction with Armour Guard but had not been supplied with it.

[5] On 23 February 2018, a teleconference on this claim was convened. One of the purposes of the teleconference was to clarify Mr Gibbons' claim. The Co-Chairperson explained to Mr Gibbons that as the Privacy Commissioner had only investigated a complaint against Armour Guard and had only recorded Armour Guard as a respondent in the certificate of investigation, Ms Thurgood would be removed as a defendant. The Co-Chairperson further explained to Mr Gibbons that the Privacy Commissioner had only investigated the complaint that Armour Guard had failed to provide him with audio recordings of a phone call made to its Hamilton branch. The Tribunal therefore had no jurisdiction in respect of his claim that Ms Thurgood had made a false statement about him to the Police or that there was a failure on the part of Armour Guard to provide him with CCTV footage.

[6] In a *Minute* dated 23 February 2008 the Co-Chairperson directed that Lisa Thurgood be removed as a defendant to the claim. She also directed that Mr Gibbons was to file an amended claim by 16 March 2018 and that should he not do so, the proceedings would be struck out.

[7] No amended claim has been filed.

Jurisdiction to strike-out

[8] In *Mackrell v Universal College of Learning* (HC Palmerston North, CIV-2005-485-802, 17 August 2005) at [48], Wild J held that the Tribunal has a wide discretionary power to strike out or to dismiss a proceeding brought before it and the exercise of this power will be appropriate in situations similar to those contemplated by High Court Rules, r 15.1 which provides:

15.1 Dismissing or staying all or part of proceeding

- (1) The court may strike out all or part of a pleading if it—

- (a) discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or
 - (b) is likely to cause prejudice or delay; or
 - (c) is frivolous or vexatious; or
 - (d) is otherwise an abuse of the process of the court.
- (2) If the court strikes out a statement of claim or a counterclaim under subclause (1), it may by the same or a subsequent order dismiss the proceeding or the counterclaim.
- (3) Instead of striking out all or part of a pleading under subclause (1), the court may stay all or part of the proceeding on such conditions as are considered just.
- (4) This rule does not affect the court's inherent jurisdiction.

[9] Section 115 of the Human Rights Act additionally provides:

115 Tribunal may dismiss trivial, etc, proceedings

The Tribunal may at any time dismiss any proceedings brought under section 92B or section 92E if it is satisfied that they are trivial, frivolous, or vexatious or are not brought in good faith.

[10] The principles to be applied are clear and well established. They are set out by Richardson P in *Attorney-General v Prince and Gardner* [1998] 1 NZLR 262 (CA) at 267. More recently in *Couch v Attorney-General* [2008] NZSC 45, Elias C J stated at [33] that it is inappropriate to strike out a claim summarily unless the court can be certain it cannot succeed and that particular care is required in areas where the law is confused or developing.

Assessment

[11] In his claim, Mr Gibbons complains that Armour Guard made unwarranted and untrue allegations against him resulting in his criminal conviction. He claims that he asked for CCTV proof of his interaction with Armour Guard and that “they” have not supplied him with this.

[12] The claim cannot succeed as it does not relate to the matter investigated by the Privacy Commissioner, namely the alleged failure of Armour Guard to provide Mr Gibbons with audio recordings of a phone call made to its Hamilton branch. The claims that Armour Guard made untrue allegations against Mr Gibbons and failed to provide him with CCTV footage, are outside the jurisdiction of the Tribunal.

[13] In any case, it is MSD rather than Armour Guard that holds the CCTV footage. As noted earlier, Mr Gibbons has taken separate proceedings against MSD in respect of their failure to provide him with the footage which have been timetabled to a hearing.

Conclusion

[14] The Tribunal has no jurisdiction in respect of the present claim as filed. It cannot succeed in its present form. Mr Gibbons has been given the opportunity to provide an amended claim but has not done so. In the circumstances, the claim must be struck out.

.....
Ms MA Roche
Co-Chairperson

.....
Dr SJ Hickey MNZM
Member

.....
Mr BK Neeson JP,
Member