

Reference No. HRRT 044/2018

UNDER THE HUMAN RIGHTS ACT 1993

BETWEEN TRACEY LEA CAMPBELL

PLAINTIFF

AND EMMETT VALLENDER

FIRST DEFENDANT

AND CITTA LIMITED

SECOND DEFENDANT

AT WELLINGTON

BEFORE:
Ms GJ Goodwin, Deputy Chairperson

REPRESENTATION:
Mr R Kee for plaintiff
Mr R Upton for first and second defendants

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 30 August 2019

**DECISION OF TRIBUNAL REFERRING COMPLAINT BACK TO
HUMAN RIGHTS COMMISSION AND RELATED ORDERS¹**

Introduction

[1] The plaintiff alleges the defendants have contravened s 22(1)(a) of Part 2 of the Human Rights Act 1993 (HRA) (discrimination in employment). The prohibited ground of discrimination relied on is that in s 21(1)(h) (disability). The first defendant is an employee of the second defendant. The defendants deny the alleged breach.

¹ [This decision is to be cited as: *Campbell v Vallender and Citta Ltd (Referral back to Human Rights Commission)* [2019] NZHRRT 41]

[2] At the teleconference held on 27 August 2019 it became apparent that the complaint may yet be able to be resolved by the parties and the Human Rights Commission (for example, by mediation).

[3] In these circumstances s 92D of the HRA applies:

92D Tribunal or Chairperson or Deputy Chairperson may refer complaint back to Commission, or adjourn proceedings to seek resolution by settlement

- (1) When proceedings under section 92B are brought, the Tribunal or the Chairperson or a Deputy Chairperson—
 - (a) must (whether through a member or officer) first consider whether an attempt has been made to resolve the complaint (whether through mediation or otherwise); and
 - (b) must refer the complaint under section 76(2)(a) to which the proceedings relate back to the Commission unless the Tribunal or the Chairperson or a Deputy Chairperson is satisfied that attempts at resolution, or further attempts at resolution, of the complaint by the parties and the Commission—
 - (i) will not contribute constructively to resolving the complaint; or
 - (ii) will not, in the circumstances, be in the public interest; or
 - (iii) will undermine the urgent or interim nature of the proceedings.
- (2) The Tribunal or the Chairperson or a Deputy Chairperson may, at any time before, during, or after the hearing of proceedings, refer a complaint under section 76(2)(a) back to the Commission if it appears to the Tribunal or the Chairperson or a Deputy Chairperson, from what is known to it about the complaint, that the complaint may yet be able to be resolved by the parties and the Commission (for example, by mediation).
- (3) The Tribunal or the Chairperson or a Deputy Chairperson may, instead of exercising the power conferred by subsection (2), adjourn any proceedings relating to a complaint under section 76(2)(a) for a specified period if it appears to the Tribunal or the Chairperson or a Deputy Chairperson, from what is known about the complaint, that the complaint may yet be able to be resolved by the parties.

Conclusion

[4] As the statutory criteria in s 92D(2) have been satisfied the complaint is to be referred back to the Commission. There is an interest in the parties seeking to resolve their differences informally before engaging the Tribunal's adversarial litigation process.

ORDERS

[5] For the reasons given above the following orders are made:

[5.1] Pursuant to s 92D(2) of the Human Rights Act 1993 the complaint by Ms Campbell is referred back to the Human Rights Commission for resolution by the parties and the Commission (whether through mediation or otherwise).

[5.2] So the proceedings are not left in suspension indefinitely, the parties are to provide the Tribunal with a progress report in approximately three months. Such report must be filed no later than 5pm on Friday 29 November 2019.

[5.3] The proceedings before the Tribunal are stayed in the interim with leave reserved to all parties to seek further directions if and when the need arises.

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Ms GJ Goodwin
Deputy Chairperson