

Reference No. HRRT 036/2018

UNDER THE HUMAN RIGHTS ACT 1993

BETWEEN TRACEY NGAHOE HUNTER

PLAINTIFF

AND KAIAPOI MONOGRAMS (2004) LIMITED

FIRST DEFENDANT

AND PENELOPE JEAN TIMOTHY

SECOND DEFENDANT

AT WELLINGTON

BEFORE:  
Ms GJ Goodwin, Deputy Chairperson

REPRESENTATION:  
Mr R Davidson for plaintiff  
Mr A Riches for first and second defendants

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 2 September 2019

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**DECISION OF TRIBUNAL REFERRING COMPLAINT BACK TO  
HUMAN RIGHTS COMMISSION AND RELATED ORDERS<sup>1</sup>**

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**Introduction**

[1] The plaintiff alleges the defendants have contravened s 44(1) of the Human Rights Act (discrimination in provision of goods and services). The prohibited ground of discrimination relied on is that in s 21(1)(f) (race). The second defendant is a director of the first defendant. The defendants deny the alleged breach.

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<sup>1</sup> [This decision is to be cited as: *Hunter v Kaiapoi Monograms (2004) Ltd (Referral back to Human Rights Commission)* [2019] NZHRRT 42]

[2] At the teleconference held on 2 September 2019 counsel for the defendants advised that in his clients' view mediation would be the most appropriate way to resolve the matter. Counsel for the plaintiff advised his client agreed with this course of action. Both parties wish to attend mediation with a view to attempting to resolve the matter.

[3] In these circumstances s 92D(2) 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) ...
- (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) ...

**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 Hunter 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 6 December 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.

.....  
**Ms GJ Goodwin**  
**Deputy Chairperson**