

Reference No. HRRT 068/2015

UNDER THE PRIVACY ACT 2020

BETWEEN JANINE SAX

PLAINTIFF

AND TEAM SHOREBREAK INCORPORATED

DEFENDANT

IN WELLINGTON

BEFORE:

Ms MG Coleman, Deputy Chairperson

Dr SJ Hickey MNZM, Member

Ms S Stewart, Member

REPRESENTATION:

Ms J Sax in person

Mr N Elsmore for defendant

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 31 August 2022

DECISION OF TRIBUNAL STRIKING OUT PROCEEDING¹

BACKGROUND

[1] On 9 November 2015, Ms Sax filed a statement of claim on this matter.

[2] A statement of reply was filed by Team Shorebreak Inc on 22 December 2015.

[3] In January 2016 and again in April 2016 the Tribunal contacted Ms Sax by email regarding the scheduling of a teleconference. No reply to either email was received.

¹ [This decision is to be cited as *Sax v Team Shorebreak Inc (Strike-Out)* [2022] NZHRRT 36.]

[4] In November 2019 the Tribunal again contacted Ms Sax by email asking her whether she still intended to pursue the claim. She was asked to respond by 13 December 2019.

[5] On 5 December 2019 Ms Sax replied first, that she would see what was happening with her lawyer, and second, that she wanted full disclosure of a particular telephone call for both criminal and civil proceedings.

[6] No further correspondence has been received from Ms Sax.

[7] In light of Ms Sax's inactivity in progressing this matter, on 6 July 2022 a *Minute* was issued advising the parties that the Tribunal intended to consider on its own motion whether the matter should be struck out under s 115A of the Human Rights Act 1993. If Ms Sax wished to continue the proceeding, she was required to advise the Tribunal and the defendant of this by 5 August 2022.

[8] Nothing has been received from Ms Sax in response to that *Minute*. In that circumstance, the Tribunal moves to consider whether to strike out the proceeding.

JURISDICTION TO STRIKE OUT

[9] The Tribunal's power to strike out proceedings is set out in s 115A of the HRA:

115A Tribunal may strike out, determine, or adjourn proceedings

- (1) The Tribunal may strike out, in whole or in part, a proceeding if satisfied that it—
 - (a) discloses no reasonable cause of action; or
 - (b) is likely to cause prejudice or delay; or
 - (c) is frivolous or vexatious; or
 - (d) is otherwise an abuse of process.

[10] The Tribunal's strike out jurisdiction is to be used sparingly, especially in cases involving lay litigants. However, the tolerance of the Tribunal even in cases involving self-represented parties is not endless. The requirement for the Tribunal to act according to the substantive merits of a case without regard to technicalities, as required by s 105 of the HRA, must be balanced against the desirability of freeing defendants from litigation which amounts to an abuse of process. See *Williams v Police* [2021] NZHC 808, (2021) 12 HRNZ at [76]-[82], [86]; *Yarrow v Finnigan* (2017) NZHC 1755 at [11]-[14], [16]; *Parohinog v Yellow Pages Group Ltd (Strike-Out Application No. 2)* [2015] NZHRRT 14 at [30]-[31].

SHOULD THE CLAIM BE STRUCK OUT?

[11] It is to be inferred from Ms Sax's failure to take any steps on this claim since November 2015 that she no longer intends to progress this proceeding.

[12] This is evident also from her failure to:

[12.1] Respond to emails sent to her in January and April 2016 regarding the scheduling of a teleconference;

[12.2] Respond to the Tribunal's inquiry in November 2019 about whether she intended to progress the proceeding after checking with her lawyer;

[12.3] Advise the Tribunal in accordance with the most recent *Minute* dated 6 July 2022 that she wished to continue the proceeding.

[13] In those circumstances, the Tribunal is satisfied the claim should be struck out. There is a need for finality both for the Tribunal and for the defendant. To leave it on foot would be an abuse of the Tribunal's processes.

COSTS

[14] In our view this is not an appropriate case for an award of costs which are to lie where they fall.

ORDER

[15] The following order is made:

[15.1] The proceeding *Sax v Team Shorebreak Inc* HRRT 068/2015 is to be struck out in its entirety under s 115A(1)(d) of the HRA.

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Ms MG Coleman
Deputy Chairperson

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Dr SJ Hickey MNZM,
Member

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Ms S Stewart,
Member