

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKAURAU**

**[2023] NZEmpC 176
EMPC 40/2023
EMPC 82/2023**

IN THE MATTER OF a challenge to a determination of the
 Employment Relations Authority

AND IN THE MATTER OF an application for recall of interlocutory
 judgment

BETWEEN CARRINGTON RESORT JADE LP
 Plaintiff

AND STACEY ROY
 Defendant

Hearing: 3 October 2023
 (Via telephone)

Appearances: W Tan, agent for plaintiff
 L Anderson, advocate for defendant

Judgment: 12 October 2023

**INTERLOCUTORY JUDGMENT (NO 3) OF JUDGE J C HOLDEN
(Application for recall of interlocutory judgment)**

[1] In my interlocutory judgment dated 16 June 2023, I made various orders as to the nature and extent of the hearing of Carrington’s challenge.¹ Carrington has now applied for a recall of that judgment, a course that is opposed by Ms Roy. Carrington also seeks a reversal of the costs judgment that awarded Ms Roy \$1,912 in respect of the good faith issue.²

¹ *Carrington Resort Jade LP v Roy (No 2)* [2023] NZEmpC 88.

² *Carrington Resort Jade LP v Roy* [2023] NZEmpC 122.

[2] The grounds upon which Carrington applies for a recall are, in summary, that the Authority Member who dealt with the investigation and who responded to the Court's request for a report under s 181 of the Employment Relations Act 2000, was biased against Carrington. Carrington points to a complaint it made to the Chief of the Employment Relations Authority about the Authority Member and what it says was a lack of action from the Chief of the Authority in dealing with that complaint.

[3] Carrington says that it chose not to attend the investigation meeting with the Authority given its concerns about the Authority Member but that it now wishes to call witnesses at the Employment Court hearing.

[4] Carrington also says that, given the Authority Member's alleged bias, her Good Faith Report has no merit.

[5] It says it believes the Court's decision to limit the nature and extent of the hearing is unfair and grossly prejudicial to Carrington.

There are limited grounds for recall

[6] Generally speaking, and subject to rights of appeal, a judgment, once delivered, must stand for better or worse.³

[7] There are limited grounds on which a court may recall a judgment, only one of which needs to be considered here.⁴ That ground is that, for some very special reason, justice requires that the judgment be recalled. This is a narrow category and cases appropriate for recall on this basis are rare.⁵

Interests of justice do not require a recall

[8] The primary reasons Carrington advances for the recall go to the substance of the Report, and the Court's conclusion. A recall application cannot be used to relitigate the reasons provided and the conclusion reached in the judgment sought to be

³ *S v R* [2022] NZSC 7 at [3].

⁴ *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC).

⁵ *Zhang v Yu* [2020] NZCA 592 at [9].

recalled.⁶ I note, however, that parties are expected to engage in the Authority process, and to comply with directions made by the Authority.

[9] Carrington did not respond to the Authority when it was provided with the draft Good Faith Report; it did not respond to the Court when asked for comment on the Good Faith Report. Mr Tan, agent for Carrington, said that he did not see the Court Registry's email. He suggests it may have gone into a junk mail folder but provided the Court with no evidence to support that suggestion. In any event, Ms Roy's advocate, Mr Anderson, responded both to the Authority and to the Court, copying Mr Tan into his responses, which should have reminded Carrington and Mr Tan of the need to respond. Carrington therefore missed not one, but two opportunities to comment on the good faith issues.

[10] Ms Roy has already been put to effort and delay in having her matter dealt with first in the Authority and now in the Court, and in responding to the good faith issues. Delaying the final resolution of her matter further by recalling the good faith judgment for more submissions would prejudice her and would be contrary to the interests of justice.

[11] I am not satisfied that the interests of justice require the recall of my interlocutory judgment. Accordingly, the application for recall is dismissed. It follows that there is no basis to disturb the costs award for the good faith issue.

[12] Ms Roy is entitled to costs on the application, which I fix at \$1,000. That sum is to be paid by Carrington to Ms Roy within 28 days of the date of this judgment.

J C Holden
Judge

Judgment signed at 1 pm on 12 October 2023

⁶ *Nuku v District Court at Auckland* [2018] NZSC 39 at [2].