

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

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2023] NZEmpC 27
EMPC 85/2022**

IN THE MATTER OF a declaration under s 6(5) of the
Employment Relations Act 2000

AND IN THE MATTER OF an application for disclosure of
documents

BETWEEN SERENITY PILGRIM, ANNA
COURAGE, ROSE STANDTRUE,
CYSTAL LOYAL, PEARL VALOR
AND VIRGINIA COURAGE
Plaintiffs

AND THE ATTORNEY-GENERAL SUED
ON BEHALF OF THE MINISTRY OF
BUSINESS, INNOVATION AND
EMPLOYMENT, LABOUR
INSPECTORATE
First Defendant

AND HOWARD TEMPLE, SAMUEL
VALOR, FAITHFUL PILGRIM, NOAH
HOPEFUL AND STEPHEN
STANDFAST
Second Defendants

Hearing: 27 February 2023

Appearances: BP Henry, D Gates and S Patterson, counsel for plaintiffs
J Catran, K Sagaga and A Piaggi, counsel for first defendant
S Valor, S Standfast and P Righteous, representatives for second
defendants
R Kirkness, counsel to assist the Court

Judgment: 27 February 2023

**INTERLOCUTORY JUDGMENT (NO 30)
OF CHIEF JUDGE CHRISTINA INGLIS
(Application for disclosure of documents)**

[1] The plaintiffs seek disclosure by the Gloriavale defendants of notes taken by Faithful Pilgrim of Shepherds and Servants meetings. Mr Pilgrim referred to the notes during the course of cross-examination, and it has since been confirmed that the notes exist. Memoranda were filed which touched on a number of issues, including the appropriate framework for dealing with the plaintiffs' application given its timing. The Gloriavale defendants identified a number of concerns in respect of relevance and the likely burden of complying with the disclosure request.

[2] I heard orally from Mr Henry, for the plaintiffs, and Mr Valor (for the Gloriavale defendants) this afternoon. It was common ground that the Court may order disclosure; the question is whether the Court should order disclosure and, if so, on what terms. I agree that the Court has the power to order disclosure in the present circumstances. The Employment Court Regulations 2000 do not deal with disclosure after a hearing has commenced. In such circumstances it is appropriate to look to the procedure set out in the High Court Rules (r 8.19) and the principles that have been developed.¹

[3] Rule 8.19 refers to grounds for believing that a party is in, or has been in control of, a document or class of documents that "should have been discovered". In this case the plaintiffs did not seek discovery of the notebooks and thus the notebooks did not need to be discovered in a narrow sense. A broader approach is however necessary, particularly in this jurisdiction. The question is not whether a particular discovery order has been breached but rather each party's obligations to disclose any evidence that may be relevant.²

¹ Refer Employment Court Regulations 2000, reg 6.

² *Commissioner of Police v Gong* [2019] NZHC 2735; *Hoyle v Hoyle* [2015] NZHC 3001 at [24].

[4] A four-stage approach generally applies under r 8.19:³

- Are the documents sought relevant, and if so how important will they be?
- Are there grounds for belief that the documents sought exist?
- Is discovery proportionate, balancing the time and cost of discovery against the potential value of discovery?
- Weighing and balancing these matters, in the Court's discretion, is an order appropriate?

[5] As I have said, there were two key points of concern from the Gloriavale defendants' perspective – the extent to which the documents sought were relevant to the matters at issue in these proceedings and the burden that disclosure would likely place on them, particularly in terms of its original scope (involving approximately 2000 pages of notes).

[6] Mr Henry explained that the documents were highly likely to contain material relevant to the way in which the Community ran and would accordingly be relevant to the matters at issue in these proceedings.

[7] The notes of the Shepherds and Servants meeting appear to be detailed, and would likely provide an insight into the operation of the various aspects of the Gloriavale community. The way that the Community operated, how decisions were made, and who made them, are all relevant to the question of the true nature of the relationship between the parties.

[8] I accept that disclosure would involve the application of time and financial resources, both of which, they say, are in short supply. During the course of oral argument Mr Henry suggested that these concerns (which I understood him to accept were valid) might be addressed, at least to some extent, by him randomly selecting

³ *Assa Abloy New Zealand Ltd v Allegion (New Zealand) Ltd* [2015] NZHC 2760 at [14].

four of the notebooks which contain notes from Shepherds and Servants meetings; Gloriavale's solicitors checking those four notebooks for privileged material and redacting the same; Mr Valor, the Gloriavale solicitor and Mr Henry meeting to enable Mr Henry to peruse the four notebooks and identify any pages that he wished to have copied; and those pages being provided to him for the purposes of cross-examination. In my view such an approach reflects an appropriate balance in the circumstances, and goes some way to addressing the burden that granting the application would otherwise place on the Gloriavale defendants.

[9] Mr Valor also raised a concern about the notebooks containing private information about named individuals. Mr Henry confirmed that any copy would have the names of such individuals redacted.

[10] On balance, I consider that the application should be granted, subject to conditions. Mr Valor confirmed that the notebooks (there are 12 in total) will be available in Christchurch tomorrow (28 February 2023). They are to be made available to Mr Henry for random selection of four by 11.00am 28 February 2023; Mr Henry is to make a random selection at that time. The Gloriavale defendants will then have 24 hours to liaise with their solicitor about redactions and to arrange a mutually convenient time to meet with Mr Henry to enable him to view the redacted documents.

[11] Leave is reserved to apply for any further or different directions.

[12] Costs are reserved.

Christina Inglis
Chief Judge

Judgment signed at 7.20 pm on 27 February 2023