

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA**

**[2024] NZEmpC 23
EMPC 197/2022**

IN THE MATTER OF proceedings removed from the
Employment Relations Authority

AND IN THE MATTER OF an application for leave to intervene

BETWEEN LYN SOAPI
First Plaintiff

AND DANNY LAU
Second Plaintiff

AND MARY LAU
Third Plaintiff

AND PICK HAWKE'S BAY
INCORPORATED
Defendant

Hearing: On the papers

Appearances: T Oldfield, counsel for plaintiffs
J Bates, L Brown and M Inwood, counsel for defendant
No appearance for Human Rights Commission
P Cranney and G Iddamalgoda, counsel for New Zealand Council
of Trade Unions
B Scotland and S Hornsby-Geluk, counsel for Horticulture New
Zealand Inc

Judgment: 21 February 2024

**INTERLOCUTORY (NO 2) JUDGMENT OF JUDGE K G SMITH
(Application for leave to intervene)**

[1] An application has been received from Horticulture New Zealand Inc for leave to intervene in this proceeding. The application is made on the grounds that:

- (a) it is an incorporated society whose purpose is to advocate on behalf of New Zealand's commercial fruit and vegetable growers;
- (b) approximately 150 of its members participate in the Recognised Seasonal Employer (RSE) scheme and depend on employing workers from overseas;
- (c) it has become aware of the proceeding only recently;
- (d) it was involved in developing the RSE scheme with Immigration New Zealand;
- (e) many of its members who participate in the RSE scheme would be affected by the issues in this proceeding;
- (f) it is applying on behalf of its members so their collective views might be heard; and
- (g) the overall justice of the case favours granting the application.

[2] Horticulture NZ proposed as conditions if leave to intervene is granted that it will only provide submissions, will not call evidence or cross-examine witnesses, and will not seek costs from any party.

[3] The plaintiffs advised that they will abide the decision of the Court but, if the application is granted, sought conditions in addition to those proposed by Horticulture NZ that:

- (a) Horticulture NZ is confined to submissions on the issues of statutory interpretation arising from the questions of law as identified in the

interlocutory judgment dated 21 June 2022 and not on the merits of the parties' claims or defences;¹ and

- (b) Horticulture NZ makes itself available for any hearing on dates that suit the parties.

[4] Pick Hawke's Bay Inc and the New Zealand Council of Trade Unions both advised they will abide the Court's decision. No response has been received from the Human Rights Commission.

Analysis

[5] Applications to intervene are dealt with under sch 3 cl 2(2) of the Employment Relations Act 2000. The test to apply is whether, in the opinion of the Court, the applicant is "justly entitled to be heard". The test is a broad one to be determined on the particular circumstances of the case.²

[6] The proposed intervener must establish a sound basis for the Court to depart from the privity of litigation, especially where the application is opposed.³ The principles to apply are well established.⁴

[7] In a general sense the reason for this application could be described as the significance of the RSE scheme to Horticulture NZ and its members, especially given the role it played in the establishment and implementation of the scheme.

[8] As already indicated, Mr Oldfield, counsel for the plaintiffs, advised that they would abide the decision but sought to have further conditions imposed beyond those that were volunteered. What prompted the request for additional conditions was the supporting affidavit from Horticulture NZ's Chief Executive, which was criticised as going beyond what might be expected from a potential intervener in certain comments made about the value of the horticulture industry, the role Horticulture NZ has taken

¹ *Soapi v Pick Hawke's Bay Inc* [2022] NZEmpC 106.

² *Matsuoka v LSG Sky Chefs New Zealand Ltd* [2011] NZEmpC 24; and *Ovation New Zealand Ltd v New Zealand Meat Workers and Related Trades Union Inc* [2018] NZEmpC 101.

³ *Seales v Attorney General* [2015] NZHC 828 at [43].

⁴ See for example *Soapi v Pick Hawke's Bay Inc* [2023] NZEmpC 94 at [65].

in developing the RSE scheme, and what it perceived to be potential financial impacts on its members if the plaintiffs succeed. Mr Oldfield's point was that what is in issue is essentially one of statutory interpretation and the role of an intervener would not normally be as broad as the supporting affidavit suggests the proposed intervener might intend.

[9] Nevertheless, and perhaps explaining why the plaintiffs abide the decision of the Court, Mr Oldfield accepted that the Court's decision is likely to have a wider impact beyond the parties and that, as an industry body, Horticulture NZ is entitled to be heard.

[10] I am satisfied that it is appropriate to grant the application subject to the following conditions:

- (a) Horticulture NZ is not to produce evidence or to cross-examine.
- (b) It is not to seek costs from any party.
- (c) For the avoidance of doubt, its participation is confined to submissions on matters of interpretation arising from the proceeding.

[11] There is no order as to costs.

K G Smith
Judge

Judgment signed at 3.50 pm on 21 February 2024