

**ORDER PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING
PARTICULARS OF THE PLAINTIFFS**

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

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

**[2025] NZEmpC 93
EMPC 395/2024**

IN THE MATTER OF	a declaration under s 6(5) of the Employment Relations Act
AND IN THE MATTER OF	an application for leave to appear by audio- visual link
AND IN THE MATTER OF	a challenge to an objection to disclosure
AND IN THE MATTER OF	an application for interim non-publication orders
BETWEEN	CG First Plaintiff
AND	OY Second Plaintiff
AND	ZF Third Plaintiff
AND	WT Fourth Plaintiff
AND	QA Fifth Plaintiff
AND	YS Sixth Plaintiff
AND	UJ Seventh Plaintiff
AND	CALENDAR GIRLS NZ LIMITED Defendant

Hearing: 9 April 2025
(Heard via Audio-Visual Link)

Appearances: V Campbell and M Miville-Fogliani, counsel for plaintiffs
R Thompson, advocate for defendant

Judgment: 13 May 2025

INTERLOCUTORY JUDGMENT OF JUDGE HELEN DOYLE
(Application for leave to appear by audio-visual link; Challenge to an objection to disclosure; Application for interim non-publication orders)

[1] The plaintiffs seek a declaration that they were employees of Calendar Girls NZ Ltd (Calendar Girls).¹

[2] This judgment resolves three interlocutory matters:

- (a) whether there should be interim orders for non-publication of the plaintiffs' names and identifying details pending determination of the application for permanent non-publication;
- (b) whether four of the seven plaintiffs who are, or will shortly be, residing overseas should be permitted to appear at the substantive hearing by audio visual link; and
- (c) a challenge to an objection to disclosure.

Interlocutory orders for non-publication

[3] The plaintiffs applied for permanent non-publication close to the date of hearing of the interlocutory applications. The application was accompanied by affidavits in support of non-publication orders from the first, second, fourth, and fifth

¹ Employment Relations Act 2000, s 6(5).

plaintiffs. The grounds in support of the application for non-publication orders are as follows:

- (a) publication would severely impact the employment, housing, and travelling prospects of the plaintiffs;
- (b) the stigma attached to the work the plaintiffs engaged in while working for Calendar Girls has led to judgments about their morality and respectability in a way that has disadvantaged them in securing employment and housing;
- (c) the plaintiffs are young and their professional and personal reputations will be damaged if publication is not prohibited;
- (d) the families of the plaintiffs may also be adversely impacted by publication of their names and information leading to their identities;
- (e) the plaintiffs face safety concerns from former clients or members of the public; and
- (f) the defendant acknowledges the importance of protecting identities in its rules where the plaintiffs were told not to disclose their names or any personal information about themselves or others to clients.

[4] Given the limited timeframe, submissions were directed to whether there should be interim orders for non-publication of names and identifying details until the application for permanent non-publication could be dealt with. The application for interim non-publication orders is opposed by Calendar Girls, on the basis that the concerns expressed by the plaintiffs are overstated. It is also argued that the plaintiffs' names and details are in the public domain, so non-publication would be futile.

[5] The full Court of the Employment Court in *MW v Spiga Ltd* considered the correct approach to non-publication in the Employment Court.² The majority

² *MW v Spiga Ltd* [2024] NZEmpC 147, [2024] ERNZ 678.

confirmed that the general rule as expressed in *Erceg v Erceg* applies in the employment jurisdiction.³ Open justice is fundamental and can only be departed from to the extent necessary to serve the ends of justice.⁴

[6] In most cases, there must be a reason to believe that specific adverse consequences could reasonably be expected to occur.⁵ If specific adverse consequences could reasonably be expected to occur, the Court needs to consider whether they justify a departure from open justice in the circumstances of the case. This is a weighing exercise.⁶

[7] Examples of factors that may be relevant in the weighing exercise, where the Court is considering whether to order non-publication, are as follows:⁷

- (a) the circumstances of the case;
- (b) the interests of the person or entity applying for a non-publication order;
- (c) the interests of the other party or parties to the litigation;
- (d) the interests of any third party;
- (e) the public interest, including the rights of media;
- (f) any further issues of equity and good conscience; and
- (g) tikanga and its principles, values or concepts.

[8] This general approach applies at an interim stage as it does at a permanent stage, but the weighing of factors may differ at the different stages.⁸

³ At [86]; *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310.

⁴ At [87].

⁵ At [88].

⁶ At [89].

⁷ At [94].

⁸ At [91].

Belief that specific adverse consequences could reasonably be expected to occur

[9] The untested affidavit evidence discloses concerns from the first, second, fourth and fifth plaintiffs about adverse consequences they state could reasonably be expected to occur from publication. They refer to negative experiences when people have come to know what they do. The fourth plaintiff is part of a church community and refers to concerns if there is publication in that respect. The first plaintiff refers to difficulties experienced in procuring housing because of the requirements in tenancy applications to disclose their job. Tenancy applications have been declined because of the work they undertake. They state that they have only been able to obtain current housing because part-time work in a different industry was declared as the income source.

[10] The fourth plaintiff states that they were dismissed from a government agency when it became known that they had worked in the sex industry, and that the resulting impact of that dismissal was significant. They refer to initially believing that their work would not affect their career prospects, and then realising after the dismissal that there is still considerable stigma attached to the nature of the work.

[11] The second, fourth, and fifth plaintiffs refer to concerns if there is publication about their continued ability to travel overseas, and potential restriction for entry into some countries. One of the plaintiffs is considering pursuing postgraduate study at an American university. They are concerned publication could affect applications for study and any scholarships to undertake that study.

[12] The second plaintiff refers to the impact on their earnings when it became known in the industry that they were married. This was information they had wanted to keep private. There was also a concern about threats made previously about exposing their name and threats towards their property. The second plaintiff made general reference to health struggles and risk of increased stress with publication in their affidavit.

[13] The affidavits provide that the plaintiffs have protected their privacy by using a different name when working in the sex industry and protecting their personal

information. Safety risks if clients learn of personal information are referred to in the affidavits.

[14] Attached to the affidavit of the fifth plaintiff is a copy of a document they received from Calendar Girls.⁹

[15] There is a requirement in the document for dancers to have a different name when working inside the club. This is referred to as a stage name. There is also reference to the need for care if personal information is given out and recognition that everyone's right to privacy is respected.¹⁰ The document also provides that if a client asks for a real name, a "fake name" should be offered. Further, that personal phone numbers should never be given out and the importance of privacy is again set out.¹¹

[16] The requirements about preservation of privacy are not inconsistent with the right to privacy in the WorkSafe guidelines that identify and manage risk for those working in the New Zealand sex industry.¹² The guidelines provide a general statement as follows about privacy:

Workers have a right to privacy while at work. A breach of a worker's privacy in the sex industry can have particularly severe consequences for workers and their families and can be a significant cause of mental harm.

[17] The WorkSafe guidelines include keeping workers' personal details such as legal name, address, and telephone numbers private.

[18] The evidence enables reasonable inferences to be drawn by the Court that specific adverse consequences could reasonably be expected to occur if personal information about the plaintiffs is known.

⁹ Calendar Girls – Introduction to Calendar Girls. This document provides guidance and rules for Calendar Girls dancers.

¹⁰ At 3.

¹¹ At 12.

¹² Worksafe Mahi Haumarua Aotearoa "Keeping healthy and safe in the New Zealand sex industry – Guidance for businesses and workers in the New Zealand sex industry" (December 2024) at 37.

Departure from open justice in the circumstances of the case

[19] The next step is to consider whether the specific adverse consequences that could reasonably be expected to occur with publication justify a departure from open justice in the circumstances of this case. This is a weighing exercise.

[20] One of the circumstances to be weighed is whether non-publication orders would be futile.¹³ Calendar Girls say that justice would not be served by ordering non-publication because there is already a substantial amount of personal information about the plaintiffs on the internet and social media sites associated with Calendar Girls. Mr Thompson submits the “horse had already bolted” because of the plaintiffs’ own actions.

[21] Documents were attached to the submissions in opposition to interim orders for non-publication. They show most of the plaintiffs and others decided to act collectively about their rights as dancers in the sex industry. This was after they stopped working for Calendar Girls. Three of the plaintiffs’ names appear in association with a written submission in support of a petition to Parliament.

[22] There is a Companies Office document in which the plaintiffs’ names appear together with eight other names. Mr Thompson submits that the plaintiffs used the media for their own benefit including fundraising and that there are photos and videos on their platforms on which they advocate for strippers. There was a submission that the plaintiffs’ roles in the sex industry are already public knowledge through their own social media sites and media reports.¹⁴

¹³ *Timmins v Asurequality Ltd (formerly known as Asure New Zealand Ltd)* [2011] NZEmpC 167 at [23]; *Crimson Consulting Ltd v Berry* [2017] NZEmpC 94, [2017] ERNZ 511 at [105]; and *AJH v Fonterra Co-operative Group Ltd* [2021] NZEmpC 111 at [13]. These cases concerned an assessment about non-publication in circumstances where there had been a considerable lapse in time between decisions published associated with the employment litigation and an application for non-publication. In some circumstances, some years had separated a decision and an application for non-publication. For example, in *AJH* about 10 years had elapsed between Court judgments and the application for non-publication.

¹⁴ There was no information provided about the plaintiffs’ social media such as Facebook or Instagram at the time of consideration of whether there should be interim orders for non-publication.

[23] From the information provided the plaintiffs' names appear in the public arena in a manner that could identify them as having worked at Calendar Girls and/or as advocates for strip club dancers and workers' rights.

[24] As referred to earlier, where matters have been in the public domain, there was no difficulty identifying the party seeking non-publication in association with their employment litigation from an internet search.

[25] Identification of the plaintiffs from the information in the public arena in this matter is likely not to be as straightforward. The documents provided at the interim stage additionally name other persons.¹⁵ The plaintiffs were also required to use a different name when working at Calendar Girls and it is likely they are not known only by one name. This weighs against a finding that non-publication is futile.

[26] The plaintiffs, who are described in the application for non-publication as young, have clear interests in protecting themselves from discrimination from those who may disapprove of their work. The affidavits disclose discrimination may occur with employment, overseas travel, study opportunities, securing of housing and other everyday activities. There is an interest for the plaintiffs in ensuring they remain safe from former clients, members of the public and from harassment. These factors weigh in favour of an order for interim non-publication being made.

[27] The interest of Calendar Girls is a neutral factor. It is clear from the guidance and rules it provides to dancers that it recognised and supported the right to privacy of personal information.

[28] There are third party interests identified. One of the plaintiffs wanted to protect their mother from the specifics of their work, fearing she will be badly treated by the community, friends, and family if it became known. They are also concerned at any impact on the career of another family member. Another of the plaintiffs was concerned about the effect publication would have on conservative members of their family. The concern was that ties may be cut from their father if it was known what

¹⁵ For example, the Companies Office document.

work they did, and that would be very distressing for him. These factors weigh in favour of non-publication.

[29] It was properly acknowledged by Ms Campbell that there will be public interest in this matter. There is public interest in open justice. This includes the right of the media to report on the proceedings. Public interest weighs against an order for non-publication because it impacts on open justice.

[30] The Court observed in *FDE v UWW* that there is a broader public interest in employees being able to exercise their legal rights without unduly undermining their privacy.¹⁶ The identities of the plaintiffs are not necessarily central to the legal issues that this matter raises. There is a level of vulnerability for workers in the sex industry if their privacy is not protected which is recognised by Calendar Girls in its guidelines and rules and the WorkSafe guidelines.¹⁷ The consequences of sex workers having their privacy breached are potentially far reaching. These aspects weigh in favour of an interim order for non-publication being made in this case.

[31] The plaintiffs have not raised any issues of tikanga. It is implicit from their references to the possibility of damage to their reputations that publication could impact their mana and/or risk the plaintiffs' experiencing whakamā.¹⁸ These matters weigh in favour of an interim order for non-publication being made.

[32] I do not accept Mr Thompson's submission that "the horse has bolted" and interim orders for non-publication of the plaintiffs' names and identifying details is futile. The Court has found that specific adverse consequences could reasonably be expected to occur in the future if there is publication. The weighing of other relevant factors favours an order for interim non-publication of the plaintiffs' names and identifying details. Evidence was only received from four of the seven plaintiffs. However, it is still appropriate to make interim orders for non-publication of all the plaintiffs' names and identifying details. Identifying some of the plaintiffs may lead to identification of the others. An interim order will protect the plaintiffs against the

¹⁶ *FDE v UWW* [2024] NZEmpC 179, (2024) 21 NZELR 1 at [24].

¹⁷ Above n 12.

¹⁸ *MW*, above n 2, at [62].

consequences of publication until determination of the application for permanent non-publication orders.

Interim orders for non-publication

[33] There is an interim order for non-publication of the seven plaintiffs' names and any information that might identify them. The plaintiffs are to be referred to by randomly selected letters. The interim orders are to remain in place until the application for permanent non-publication can be dealt with at the substantive hearing.

Application by first, third, fourth, and sixth plaintiff for leave to appear at the Employment Court hearing via audio visual link

[34] The application for leave to appear via audio visual link states that the third and sixth plaintiffs currently reside permanently outside of New Zealand in Australia and have no intention to return to New Zealand in the foreseeable future.

[35] The first and fourth plaintiffs have, or will, leave New Zealand on dates in May or June 2025. The first plaintiff will travel to Japan, South Korea, Taiwan and the Philippines with plans to return to New Zealand in or about September 2025. The fourth plaintiff spends part of the year in New Zealand and Canada and will be returning to Canada in May or June 2025.

[36] The application is opposed by Calendar Girls. Calendar Girls says that the nature of the proceeding is one where all the plaintiffs are key witnesses and there will be extensive cross examination and considerable documents to be put to each witness. It says further that an assessment of credibility will be essential. Concerns are raised about whether the plaintiffs have secure and reliable access to the internet to enable recordings to be played of media interviews and prevent delays. There is also a concern that the plaintiffs may communicate with each other whilst giving evidence.

[37] The ordinary way for a party or witness to give evidence in a civil proceeding is orally in a courtroom in the presence of a Judge, the parties, and any members of

the public who choose to attend.¹⁹ There is no presumption in favour of giving evidence in the ordinary way.²⁰

[38] The Court may allow evidence to be given by audio visual link in civil proceedings including for appearances of a party and witness. Before such an order is made, the Court must consider whether or not the other party consents and must have regard to the criteria in s 5 of the Courts (Remote Participation) Act 2010. The criteria are:

- (a) The nature of the proceedings.
- (b) The availability and quality of the technology that is to be used.
- (c) The potential impact on the use of technology on the effective maintenance of the rights of the other parties to the proceedings, including:
 - (i) the ability to assess the credibility of witnesses and the reliability of evidence presented to the Court; and
 - (ii) the level of contact with the other participants.
- (d) Any other relevant matters.

[39] All the plaintiffs intend to provide evidence at the substantive hearing. It is accepted that all of them are key witnesses.

[40] The tests to be applied in the substantive hearing, in relation to proceedings where a declaration as to whether the plaintiffs were employees, are well-established.²¹

[41] There will be cross examination of each of the plaintiffs and documents will be put to them during their evidence. Ms Campbell advises that the four plaintiffs

¹⁹ High Court Rules 2016, r 9.51; Evidence Act 2006, s 83.

²⁰ *Wealleans v R* [2015] NZCA 353 at [34].

²¹ *Rasier Operations BV v E Tū Inc* [2024] NZCA 403, (2024) 20 NZELR 813 (CA).

have been provided with a copy of the guideline for appearing by audio visual link published on the Employment Court’s website.²² She says further that each of the plaintiffs will have access to documents during the hearing either by way of electronic bundle or hard copy. Directions have already been made for the plaintiffs to take responsibility for the preparation and filing of an agreed bundle of documents.²³ Although there are to be recordings played these will no doubt be accompanied by a transcript. There are adequate safeguards in the guidelines to deal with documents in a manner that does not cause delay or unnecessary interruptions during the hearing. The nature of the proceedings does not support the contention that appearance by audio visual link would be inappropriate.

[42] The first plaintiff will have access to stable connectivity and a suitable quality of technology while in Japan to enable the hearing to proceed without interruption and delay but is unable to advise that connectivity will be of the same quality while in Korea, Taiwan, or the Philippines. If the hearing is scheduled after September 2025 the first plaintiff would be able to attend in person, which is their preferred means of giving evidence.

[43] The fourth plaintiff will be in either New Zealand or Canada and will therefore have access to suitable connectivity and quality technology.

[44] The third and sixth plaintiffs have not provided evidence. Ms Campbell advised the Court that it is understood they have access to laptops and good internet connectivity.

[45] The Employment Court in *Shaw v Bay of Plenty District Health Board* considered whether the evidence by audio visual link is less ideal than a witness appearing in person. In that matter, the Court concluded that there were adequate safeguards in the Court’s guidelines for appearing by audio visual link to ensure the evidence is fully and fairly presented.²⁴

²² Employment Court of New Zealand “Guidelines for Appearing by Audio-Visual Link, Including in Virtual Hearings” <www.employmentcourt.govt.nz>.

²³ *CG v Calendar Girls NZ Ltd* EMPC Wellington 395/2024, 17 February 2025 at [1(e)].

²⁴ *Shaw v Bay of Plenty District Health Board* [2020] NZEmpC 146 at [18].

[46] The Court was referred to a judgment from the Court of Appeal in *E v R*, in the criminal jurisdiction about whether a warning should invariably be given to juries about the risks of relying on demeanour to assess credibility.²⁵ The issue was also considered by the Supreme Court in *Taniwha v R*.²⁶ These judgments confirm that a witness's evidence must be considered in the context of all of the evidence and relevant factors in the case.²⁷

[47] While these are matters in the criminal jurisdiction, the observations in *E v R* and *Taniwha v R* apply to assessment of credibility of evidence generally, including in the employment jurisdiction.

[48] There is a broad assessment undertaken by the Court of the credibility and reliability of evidence of a witness. All the evidence is considered with other relevant factors. This supports that evidence can be fully and fairly presented via audio-visual link.

[49] Another concern for *Calendar Girls* is that there may be a level of contact between the plaintiffs during the giving of evidence because they have acted collectively in the past. Two of the four plaintiffs will be in different countries, and the other two plaintiffs are in Australia. The Court was advised by the counsel that the two plaintiffs who reside in Australia are no longer in a partnership. The concern about contact appears directed more to messaging.

[50] There are adequate controls in the guidelines for appearing by audio-visual link. The Court also maintains supervision of witnesses during a hearing. The guidelines provide a remote participant will not be able to use other electronic devices such as smart phone at any time while participating in the hearing except with permission of the Judge.²⁸ Strict adherence to that requirement is required.

²⁵ *E v R* [2013] NZCA 678 at [32] – [33]

²⁶ *Taniwha v R* [2016] NZSC 121, [2017] 1 NZLR 116.

²⁷ *E*, above n 25, at [34]; *Taniwha*, above n 26, at [45].

²⁸ Above n 22.

[51] The application for appearance of the first, third, fourth, and sixth plaintiffs via audio-visual link is granted on the following conditions:

- (a) The four plaintiffs are to participate in a test with the Registrar to ensure that there is proper connectivity and that the devices used by the plaintiffs are adequate for the Court's purpose. The test and its satisfactory completion will be undertaken before the hearing.
- (b) The plaintiffs must attend with, and have access to, all documents to be referred to in either an electronic or hard copy.
- (c) The plaintiffs must familiarise themselves with all the requirements in the Court's guideline for appearing by audio-visual link.²⁹

Challenge to objection to disclosure

[52] Calendar Girls has challenged the plaintiffs' objection to disclosure.³⁰

[53] The objection to the notice requiring disclosure on behalf of the plaintiffs under reg 44(1) of the Regulations was on the grounds that if the documents are disclosed it will be injurious to the public interest. It is also argued that the requested documents are beyond the scope of the application before the Court and are not relevant to the proceedings.

[54] Although not specifying the document or documents to which the objection relates as required by reg 44(2) there was further elaboration on the objection in an emailed letter dated 17 February 2025.³¹

[55] The challenge to the objection to disclosure was on the basis that it was not accepted that disclosure would be injurious to the public interest and that the discovery request was relevant to the proceedings. The challenge expanded on the timeframes for some of the categories of document to include disclosure for three months after

²⁹ Above n 22.

³⁰ Employment Court Regulations 2000, reg 45.

³¹ Emailed letter from Ms Campbell to Mr Thompson dated 17 February 2025.

undertaking services. There were other variations between the notice requiring disclosure and challenge to objection to disclosure. No point was taken by Ms Campbell other than to maintain such disclosure was too broad and beyond what is necessary for the Court.

[56] The Court has assessed each of the categories of documents using the corresponding letters in the challenge to objection to disclosure. There is a broad category of disclosure. It is that Calendar Girls is aware that the plaintiffs engaged prior to, after and while providing services in other work. Disclosure is sought of the nature of services provided, funds received from the work and the terms entered at the time of agreeing to provide services.

[57] Mr Samson, the sole director of Calendar Girls, provided an affidavit supporting the challenge to the objection to disclosure. He states that the information requested will establish the common intentions of the parties about the relationship, whether they are in business on their own account, and industry practice. There has been consideration of these broader aspects under each of the categories of documents.

[58] For the purposes of regs 40-52, reg 38 defines that a document is relevant if it directly or indirectly:

- (a) supports, or may support, the case of the party who possesses it; or
- (b) supports, or may support, the case of a party opposed to the case of the party who possesses it; or
- (c) may prove or disprove any disputed fact in the proceedings; or
- (d) is referred to in any other relevant document and is itself relevant.

[59] Rule 8.14 of the High Court Rules 2016 provides that, in considering whether a search for documents is reasonable, there should be an assessment of the nature and complexity of the proceedings. Further, there should be an assessment of the number of documents involved, the ease and costs of retrieving a document and the

significance of any documents likely to be found. There is a need for disclosure to be proportionate to the subject matter of the proceedings.

Document categories A and C

[60] The documents in category A are for Inland Revenue Department (IR) records during the periods the plaintiffs worked with the defendant and six months before undertaking services and a period of three months after undertaking services. The documents in category C are for details of any payments to IR, Accident Compensation Corporation (ACC), or any government organisations for taxes, penalties, or unpaid taxes or ACC.

[61] The plaintiffs are willing to provide copies of their IR and ACC records for the period of their engagement at Calendar Girls, including details regarding the payment of withholding tax, unpaid taxes, and penalties.

[62] Ms Campbell has advised the Court that the plaintiffs have indicated that they will provide evidence of other work undertaken during their engagement at Calendar Girls.

[63] The issue is whether IR and ACC records before and after the plaintiffs worked for Calendar Girls should be disclosed.

[64] The focus for the Court will be on the period of the relationship between the plaintiffs and Calendar Girls for ascertaining common intention and whether the plaintiffs were effectively working on their own account.³² Sources of income for the plaintiffs during the provision of services to Calendar Girls may be relevant together with other evidence in any assessment of industry practice. Records outside of the period of the provision of services are not relevant.

[65] The challenge to the objection to disclose documents under category A and C for a period beyond that for which the plaintiffs provided services for the defendant is unsuccessful.

³² *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721, [2005] ERNZ 372.

Document category B

[66] The documents in category B are for full and unredacted copies of bank accounts for the period the plaintiffs worked for Calendar Girls.

[67] The plaintiffs are willing to provide copies of redacted bank statements showing all income received during their period of engagement with Calendar Girls and give evidence about the income sources. That is relevant information. Purchases and payments identifiable from the accounts are not relevant. Their disclosure would be unnecessary or undesirable, as the focus will be on the real nature of the relationship with Calendar Girls. Mr Thompson properly accepted that there was likely little relevant information to be obtained by considering purchases made by the plaintiffs.

[68] The challenge to the objection to disclosure of unredacted bank statements in category B is unsuccessful. Redacted bank statements are to be provided showing all income received by each of the plaintiffs for the period of their respective engagements with Calendar Girls.

Document category E

[69] The documents in this category are for which of the plaintiffs have been obtaining any benefit from Work and Income New Zealand (WINZ) during the period that they provided services to the defendant?³³

[70] The first, second, fourth, fifth, and seventh plaintiffs stated that they did not receive any benefits from WINZ whilst working at Calendar Girls. No evidence was received from the third or sixth plaintiff whether they received a benefit whilst working at Calendar Girls. There was no other evidence provided to support that they were in receipt of a benefit.

[71] The Court must be satisfied that the disclosure sought is relevant, rather than simply being a possibility.³⁴ Mr Thompson submits relevancy includes what the

³³ A request for details of any grants or loans from WINZ in the notice requiring disclosure was not repeated in the challenge to objection.

³⁴ *Fox v Hereworth School Trust Board (No. 6)* [2014] NZEmpC 154, (2014) 12 NZELR 251 at [40].

plaintiffs may have stated about the nature of the relationship they had with Calendar Girls when a benefit was obtained. This would not prove or disprove any disputed fact in the proceedings. The labels used by the parties not only in the written agreement between them but in other contexts are not decisive.³⁵

[72] I conclude that the receipt of a benefit is not sufficiently relevant.

[73] The challenge to the objection to disclose documents under category E is unsuccessful.

Document category F and G

[74] These categories related to details of any COVID subsidy applications made and COVID grants provided or received.

[75] The plaintiffs agree to provide copies of all documents relating to applications for COVID subsidies and/or grants received where they exist and/or have been applied for during the period they provided services for Calendar Girls.

Document category D and H

[76] These relate to any communication with IRD, banks or other entities regarding loans or funds obtained when providing services with the defendant.

[77] The disclosure request was objected to by the plaintiffs as too broad and lacking a specific timeframe. Whilst the timeframe was included in the challenge to objection to disclosure the request is still too broad. It could relate to applications for credit cards and overdraft facilities for personal use.

[78] There have been some changes in a reasonably fluid manner between the notice requiring disclosure and the challenge to the objection to disclosure. Mr Thompson can have a further opportunity to refine this request under category D. Agreement may be able to be reached if the request is properly focussed and relevant to an assessment whether the plaintiffs were in business on their own account. This would

³⁵ *Rasier*, above n 21, at [2]; Employment Relations Act 2000, s 6(3).

likely require a focus on business applications for loans during the period that services were performed for Calendar Girls by the plaintiffs.

[79] Leave is reserved for either party to return to the Court about the refined request for documents to be disclosed under category D and any issues relating to the assembly and inspection of the documents that are to be disclosed.

[80] There has been concern expressed in the affidavits of the plaintiffs about the potential breach of privacy and confidentiality if an order for disclosure is made.

[81] There are protections in reg 51 of the Regulations that apply. The integrity and confidentiality of any documents disclosed must be always maintained, and the person obtaining disclosure must use the documents and their contents for the purposes of the proceedings only and for no other purpose.

Costs

[82] Costs are reserved. The plaintiffs have had success in two of the three interlocutory applications and Calendar Girls has had some limited success in the challenge to the objection to disclosure. The proceeding was assigned Category 2B for costs purposes under the Practice Directions Guideline Scale.³⁶ The parties are encouraged to reach an agreement as to costs.

[83] If agreement cannot be reached, the plaintiffs are to file and serve a memorandum as to costs within 21 days of the date of this judgment. The defendant has a further 14 days to file and serve a memorandum in response with any reply to be filed and served within a further 7 days. Costs will then be determined on the papers.

Helen Doyle
Judge

Judgment signed at 11.45 am on 13 May 2025

³⁶ Employment Court of New Zealand “Practice Directions” (1 September 2024) <employmentcourt.govt.nz> at No 18.