Employment Court of New Zealand

Clearkin v Geneva Healthcare Limited [2019] NZEmpC 174 (26 November 2019)

Last Updated: 29 November 2019

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKAURAU

[2019] NZEmpC 174
EMPC 17/2019

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	BRONWYN JOY CLEARKIN Plaintiff
AND	GENEVA HEALTHCARE LIMITED Defendant

Hearing:	(On the papers)
Appearances:	B Clearkin, in person M Manik, agent for the defendant
Judgment:	26 November 2019

JUDGMENT OF JUDGE B A CORKILL

[1] At a Judicial Settlement Conference held on 1 May 2019, the parties entered into an agreement settling all claims Bronwyn Clearkin had against Geneva Healthcare Ltd (GHL) on the basis of a statement of claim she had previously placed before the Court raising a challenge.

[2] Some months later, Ms Clearkin filed a document stating that she now wished to claim penalties for failure to maintain wage records and client rosters together with interest; compensation in respect of false allegations made against her; associated fees and Court costs, and reimbursement of an amount paid for a uniform.

[3] On 19 September 2019, I issued a minute to the parties. I stated that, although the document was not couched as an amended statement of claim which would comply

with the requirements of reg 11 of the Employment Court Regulations 2000, I intended to treat it as such so as to enable it to be considered by the Court.1

[4] I referred to the terms of the settlement agreement that had been entered into, including the fact that the agreement was stated to be in full and final settlement of all claims between the parties.

[5] I went on to state that there was an issue which the Court would need to consider: was the bringing of the further claims an abuse of the Court's process, which would mean that the document making further claims against GHL should be struck out?

[6] Before considering that issue, I provided a timetable to allow both parties to file any submissions and evidence. I said I would then consider whether an order of strikeout should, in the circumstances, be made on the papers.

[7] Ms Clearkin filed a further document, elaborating on her claims; and also stating that the settlement which had been reached only related to a claim for unpaid wages, travel expenses and lieu hours. Her point was that she was able to advance other claims notwithstanding the settlement.

[8] The Human Resources Manager for GHL, Ms Manik, responded by stating that the company considered there had been a full and final settlement and that no further claims could be brought.

[9] It is necessary to record the terms of the settlement agreement signed by Ms Clearkin and Ms Manik on behalf of GHL. The document stated:

Bronwyn Clearkin has challenged a determination of the Employment Relations Authority dated 19 November 2018 on a non de novo basis. The issues she has raised in the challenge relate to claims for unpaid travelling time and mileage expenses, unpaid daily pay for alternative lieu days for public holidays worked and reimbursement of a filing fee. *All other claims made by Bronwyn Clearkin against Geneva Healthcare Limited have been settled at mediation or by the unchallenged portions of the Authority's determination dated 19 November 2018.*

1 Regulation 11 describes the essential pre-requisites of a statement of claim.

Geneva Healthcare Limited and Bronwyn Clearkin have now reached agreement at a Judicial Settlement Conference to *settle the challenge* on the following basis:

1. Geneva Healthcare Limited is to pay Bronwyn Clearkin the sum of

$1100.00 on or before 8 May 2019.

2. *Such sum is accepted by her in full and final settlement of all claims she has against Geneva Healthcare Limited.*
3. Bronwyn Clearkin is to be responsible for any liability for tax she may owe to the Inland Revenue Department on the settlement sums.
4. *This agreement may be pleaded by Geneva Healthcare Limited in defence to any claims Bronwyn Clearkin may commence against it in respect of her previous employment with Geneva Healthcare Limited.*
5. Upon receipt by her of the said sum of $1100.00 Bronwyn Clearkin is to file a notice of discontinuance of her challenge with the Registrar of the Employment Court at Auckland.

(Emphasis added)

[10] I record that there is no evidence of a notice of discontinuance of Ms Clearkin's challenge having been filed.

[11] The nature of the agreement entered into is what lawyers call an "accord and satisfaction". A classic definition of such an agreement is as follows:2

Accord and satisfaction is the purchase of a release from an obligation arising under contract or tort by means of any valuable consideration, not being the actual performance of the obligation itself.

[12] Whether such a release has been given depends on the language used in the relevant settlement agreement, determined by applying orthodox principles of contractual interpretation.

[13] The first point to be made is that the settlement agreement entered into was not confined to the three topics referred to by Ms Clearkin.3 Rather, it is clear beyond doubt that the parties agreed to settle all claims Ms Clearkin had against GHL. This is clear from the preliminary statement and in cls 2, 4 and 5 of the settlement agreement.

2. *British Russian Gazette and Trade Outlook Ltd v Associated Newspapers Ltd* [1933] 2 KB 616 (CA) at 616.

3 Above at [2].

[14] In summary, the clauses to which I have referred are expressed in broad and clear language. There can be no doubt that the parties intended that all claims brought by Ms Clearkin would be brought to an end.

[15] That being the case, there is a binding settlement agreement, and Ms Clearkin is not at liberty to take any further proceedings against GHL.

[16] Rule 15.1 of the High Court Rules 2016 provides that the Court may strike out all or part of a pleading if it discloses no reasonably arguable cause of action, is frivolous or vexatious, or is otherwise an abuse of the process of the Court. It is well

established that the Employment Court may proceed on the basis of this rule.4

[17] It has been held in this Court that it may be an abuse of Court processes to attempt to revive, or continue with, litigation that has been settled.5 It has also been held that, where there is a settlement amounting to accord and satisfaction, a plaintiff may be estopped from proceeding with litigation.6

[18] In the present case, the bringing of the further claims by Ms Clearkin amounts to an abuse of process because there is a binding settlement precluding that possibility.

[19] Treating the document recording the claims of 11 September 2019 as an amended statement of claim, it is now struck out.

[20] There are no issues as to costs.

B A Corkill Judge

Judgment signed at 9.30 am on 26 November 2019

4. *Auckland Council v Drought* [2019] NZEmpC 63 at [17]- [18]; Employment Court Regulations 2000, reg 6(2)(a)(ii).

5 *X v A* [1992] 2 ERNZ 1079 (EmpC).

6 *Cabletalk Astute Network Services Ltd v Cunningham* [2004] NZEmpC 43; [2004] 1 ERNZ 506 (EmpC) at [53].
