



Employment Court of New Zealand

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Courage v Attorney-General [2022] NZEmpC 18 (10 February 2022)

Last Updated: 16 February 2022

IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA ŌTAUTAHI

[\[2022\] NZEmpC 18](#)

EMPC 363/2021

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

AND IN THE MATTER OF an application for in-Court media
coverage

BETWEEN HOSEA COURAGE, DANIEL
PILGRIM AND LEVI COURAGE
Plaintiffs

AND THE ATTORNEY-GENERAL sued on
behalf of the Ministry of Business,
Innovation and Employment,
Labour Inspectorate
First Defendant

AND HOWARD TEMPLE, FERVENT
STEDFAST, ENOCH UPRIGHT,
SAMUEL VALOR, FAITHFUL
PILGRIM, NOAH HOPEFUL AND
STEPHEN STANDFAST
Second Defendants

AND FOREST GOLD HONEY LIMITED
AND HARVEST HONEY LIMITED
Third Defendants

AND APETIZA LIMITED
Fourth Defendant

Hearing: On the papers

Appearances: B P Henry, D Gates and A Kenwright, counsel for
plaintiffs J Catran and A Piaggi, counsel for first
defendant
S G Wilson, counsel for second, third and fourth
defendants R Kirkness, counsel to assist the Court
M Q-Y Lee, counsel for TVNZ

Judgment: 10 February 2022

HOSEA COURAGE, DANIEL PILGRIM AND LEVI COURAGE v THE ATTORNEY-GENERAL sued on

behalf of the Ministry of Business, Innovation and Employment, Labour Inspectorate [\[2022\] NZEmpC 18](#) [10 February 2022]

INTERLOCUTORY JUDGMENT (NO 2) OF CHIEF JUDGE CHRISTINA INGLIS

(Application for in-Court media coverage)

[1] An application has been made by Television New Zealand Ltd to film, take photographs and record sound during the hearing commencing on 21 February 2022. The plaintiffs have no objection to the application; the Attorney-General abides the decision of the Court; and the second, third and fourth defendants oppose the application. I directed that the opposition be referred to the applicant to provide it with an opportunity to respond to the issues raised on the defendants' behalf, which it has done.

[2] The concerns raised on behalf of the second, third and fourth defendants can be summarised as follows:

- While there is an accepted public interest in the defendants due to the nature of their community, that should be distinguished from questions of public importance in respect of the proceedings.
 - There are important privacy interests of individuals within the community and of non-parties which need to be protected.
 - In-Court media coverage would likely result in a significant intrusion on commercially sensitive information and risks causing reputational damage (including to non-parties).
 - The hearing is split, with the hearing commencing on 21 February 2022 focussed on the issue of whether each of the plaintiffs were employees of the second, third and/or fourth defendants. Issues relating to the Labour Inspector's investigation and conclusions will be the focus of the second hearing. That means that any public interest generated as a result of the investigation undertaken by the Labour Inspector does not arise at this stage.
- The standard conditions for media coverage will not be sufficient to ensure fair and accurate reporting and the preservation of the second, third and fourth defendants' right to a fair trial, including because of the video-sharing arrangements that the applicant has in place with another organisation.
 - Allegations made against the second, third and fourth defendants include some which are untested and against people who are not before the Court.
 - The unique nature of the Gloriavale community and their vulnerability as highly identifiable people weighs heavily against the granting of the application. Particular concern is expressed about the potential for media coverage to cause significant anxiety and stress to witnesses.

[3] Court proceedings are generally open to the public and the media. There are, however, restrictions on taking notes, filming and recording in Court. Anyone wishing to do so must obtain prior judicial permission. That permission involves the exercise of a broad discretion.

[4] The In-Court Media Guidelines 2016 (Media Guidelines) have been developed to assist. Those guidelines set out a number of principles which are relevant (at [Part 2](#) and [Part 9](#)). The key underlying principle is the promotion of open justice. Other principles must also be weighed in the mix, including the need for a fair trial; the principle that the media has an important role in the reporting of trials as the "eyes and ears of the public"; and the interests, reasonable concerns and perceptions of the parties and witnesses.

[5] It is correct that the allegations contained within the plaintiffs' statement of claim are untested and in large measure denied by the second, third and fourth defendants. That is the usual way with cases going to Court for hearing and does not, of itself, mean that the media should be restricted in its coverage.

[6] I do not accept the overarching submission that these proceedings do not give rise to questions of public importance and genuine public interest. The proceedings

engage important and novel questions as to the alleged employment status of the plaintiffs while undertaking work during their time living in the Gloriavale community, including while they were children. Resolution of the matters at issue may have important implications not just for the particular parties to these proceedings, but more generally.

[7] The second, third and fourth defendants say that the work was done for the good of the greater community and the indicia usually attaching to an employment relationship are missing. That is a question for trial. But what is clear is that while the test for determining employment status can be stated in simple terms, its application in the present context will almost certainly raise a number of complex issues which the public may well be interested in. The fact that a number of investigations have been conducted by government agencies into the Gloriavale community reinforces the point about the broader public interest in these particular proceedings.

[8] Nor do I accept that the application should be declined on the basis of privacy concerns and commercial sensitivities. Such concerns can be adequately addressed by other means, including via orders of the Court (which have not yet been sought). This includes, as counsel for the applicant points out, provision for an application to be made for a ruling that witnesses not be filmed, photographed or recorded.

[9] While concerns have been raised about the possibility of unbalanced reporting, I note that TVNZ is bound by rules and protocols, including the Broadcasting Standards Authority Codes of Practice and the Media Council principles. TVNZ confirms that its content sharing agreement with another organisation involves material supplied by TVNZ for publishing;

not the other way around.

[10] I am satisfied that the specific concerns identified by the second, third and fourth defendants in respect of privacy and commercial sensitivity can be addressed in the usual way, on application, if such orders are considered appropriate. The concerns which otherwise arise can adequately be addressed by imposition of the standard conditions for safeguarding witnesses set out in [Part 11](#) of the Media Guidelines.

[11] Finally, the hearing will now proceed by way of remote participation due to the current situation and setting with COVID-19. Attention is drawn to the protocols relating to remote participation, including for the media, which are located on the Court's website.¹ Given the outcome of this application, the applicant is exempted from 12(a) of the Guidelines for Remote Viewing and may record video and sound, and capture images subject to the standard conditions and any further order of the Court.

Conclusion

[12] The application is granted subject to the standard conditions and any further order of the Court.

Christina Inglis Chief Judge

Judgment signed at 2.50 pm on 10 February 2022

1. "Employment Court operations under Covid-19 Protection Framework dated 9 February 2022" and "Guideline for Remote Viewings of Hearings" <www.employmentcourt.govt.nz>.

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