



Employment Court of New Zealand

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Courage v Attorney-General [2022] NZEmpC 20 (11 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 20](#)

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 to require answer
to interrogatories

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

Judgment: 11 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 20](#) [11 February 2022]

INTERLOCUTORY JUDGMENT (NO 3) OF CHIEF JUDGE CHRISTINA INGLIS

(Application for leave to require answer to interrogatories)

[1] The plaintiffs have filed an application for leave to require the second defendants to answer interrogatories. Leave is required because the application was advanced after the case had been set down for hearing.¹ The second defendants are opposed to the grant of leave and opposed to being required to provide answers to the interrogatories if leave is granted.

[2] The application has been advanced at a late stage. Requiring the second defendants to answer the interrogatories would put significant pressure on them at a time where the focus is on trial preparation. Mr Wilson, counsel for the second defendants, submits that this weighs against the grant of leave. It is also relevant to the strength of the second defendants' opposition to the substantive application. Consideration of each leads me to the same end point – namely dismissal of the application. My reasons follow.

[3] The plaintiffs filed their statement of claim on 12 October 2021. Urgency was sought and granted. A telephone directions conference was held on 21 October 2021 and a number of directions and orders were made, including in relation to the timeframe for resolving interlocutory matters identified by the parties. In this regard, I directed that any other interlocutory application was to be filed and served no later than 4pm on 5 November 2021. A further order was made that once the hearing was set down, no amended pleadings were to be filed and no interlocutory applications were to be advanced without the leave of the Court.² The hearing was tentatively set down for a five-day fixture commencing 21 February 2022.

[4] A further telephone conference was held on 16 November 2021 to deal with a number of pre-trial issues, and the tentative dates for the hearing were discussed.

¹ [High Court Rules 2016](#), r 7.7; [Employment Court Regulations 2000](#), reg 6.

2. *Courage v Attorney-General* EmpC Christchurch EMPC 363/2021, 21 October 2021 (Minute) at [7(j)].

Those tentative dates were subsequently confirmed and the hearing formally set down on 22 November 2021. Over a month later, out of hours and on the last weekend before the final working week of the year, the plaintiffs served a set of interrogatories on the second defendants. The second defendants objected to the interrogatories on the basis that leave had not been sought and that the interrogatories were, in any event, irrelevant, unnecessary and oppressive. On 20 January 2022 the plaintiffs filed a notice of application seeking leave and orders requiring the second defendants to answer interrogatories. Further material was filed in support of, and in opposition to, the orders sought, and it was agreed that the application could be dealt with on the papers.

[5] There are 10 interrogatories, although the final interrogatory is divided into an extensive number of sub questions. The interrogatories can be classified into five broad categories.

[6] The first category relates to the “Declaration of Commitment”, a religious profession signed by adult members of the community. The first three interrogatories are directed at the signing of that declaration by one of the second defendants; what that meant; and the identity of the “Overseeing Shepherd” at the time it was signed.

[7] The second category relates to financial management issues and the second defendants' involvement in them (questions 4 to 9).

[8] The third category relates to the bank account details of the Christian Community Trust; the Christian Partners Partnership; Forest Gold Honey Limited; Harvest Honey Limited; and Apetiza Limited (questions 10.1 to 10.5).

[9] The fourth category relates to the bank account details in respect of two specified accounts (the “home account” and the “sharing account”) (questions 10.6 to 10.7).

[10] The final category is directed at Working for Families payments; the account to which they were paid; and the account details, and payments made, in respect of living expenses to members of the community (questions 10.8 to 10.9).

[11] Interrogatories are written questions designed to draw out facts that are relevant to issues in dispute in proceedings. There is no express provision relating to interrogatories in this Court. That means that the approach adopted in the [High Court Rules 2016](#) is to be applied.³ While r 8.38 of the Rules provides that an order to answer interrogatories may be made “at any stage of any proceedings”,⁴ it makes it clear that such an order must not be made “unless [the Judge is] satisfied that the order is necessary at the time when it is made.”⁵ Rule 7.7(1) is also clear that no interlocutory application or steps may be made after the close of pleadings date without the leave of a Judge.

[12] The underlying purpose of interrogatories can be summarised as follows, namely to:⁶

- (a) obtain admissions;
 - (b) reveal weaknesses in the other party's case;
 - (c) obtain information as to material facts which the applicant needs to prove in support of its case;
 - (d) ascertain details of aspects of the other party's case so as to reduce surprise when statements of evidence are served or at trial;
 - (e) obtain clarification of the other party's case and limit the other party's ability to depart from its case as clarified;
- and

(f) narrow the issues between the parties and thus reduce the expense and length of trial, including the expense in earlier stages of litigation such as disclosure of documents and statements of witnesses.

3 [Employment Court Regulations 2000](#), reg 6.

4 [High Court Rules 2016](#), r 8.38(1).

5 Rule 8.38(4).

6. *Ash v Singh* [2019] NZHC 2790 at [179]; and *Wright v Attorney-General* [2021] NZHC 18, [2021] 2 NZLR 201 at [11].

[13] A party may object to providing answers to interrogatories. The grounds for objection are set out in r 8.40. They include relevance (the interrogatory does not relate to a matter in question between the parties involved in the interrogatories)⁷ and where the interrogatory is vexatious or oppressive.⁸ The second defendants' objection to answering the interrogatories centres on both.

[14] Relevance extends to any facts the existence or non-existence of which is relevant to the existence or non-existence of the facts directly in issue.⁹ While fishing via interrogatories is not permitted,¹⁰ an interrogatory is not necessarily fishing if the answer may prove irrelevant, so long as the interrogatory is potentially relevant to the subject matter.¹¹ So relevance is not to be approached on a narrow basis.

[15] The subject matter of this claim is focussed on the status of each of the plaintiffs and whether any of them were employees of the second, third and fourth defendants (or a combination of them). Section 6 of the [Employment Relations Act 2000](#) confers exclusive jurisdiction on this Court to declare whether a person is an employee and if so, of whom. An employee is defined within s 6(5). As that provision and the leading authorities make clear, the inquiry is intensely fact-specific and generally includes regard to a range of indicia, including the nature and degree of control and integration between the putative employer and putative employee in respect of the work being done.¹² The focus is on the real, rather than the described, nature of the relationship.

[16] The plaintiffs resided at Gloriavale, a Christian community located in the South Island. During their time at Gloriavale they say that they were obliged to undertake work for each, or all, of the defendants. The second defendants are known as "Shepherds" and hold leadership positions within the community. The third and

7 Rule 8.40(a).

8 Rule 8.40(b).

9 *Marriott v Chamberlain* [1886] UKLawRpKQB 89; (1886) 17 QBD 154 (CA) at 163.

10 *Re Securitibank* (No 31) [1984] NZHC 126; (1984) 1 PRNZ 514 at 519.

11. Matthew Casey and others *Annotated High Court Rules* (4th ed, LexisNexis, Wellington, 2018) at 357.

12 See *Bryson v Three Foot Six Ltd* [2005] NZSC 54, [2005] ERNZ 461.

fourth defendants are three companies through which the community operates a number of agricultural enterprises.

[17] The defendants have denied the claims set out and say that the plaintiffs were in full-time education until they reached the age of 16. They also take issue with various descriptions in the statement of claim of the way the community operates, including the level of coercive power attributed to the Shepherds, and the characterisation of the "Declaration of Commitment".

[18] It is difficult to see how the first category of interrogatories (directed at whether one of the second defendants took the Declaration of Commitment, what they understood it to mean, and who administered it) is relevant to determining whether each of the plaintiffs was an employee. Nor is it clear how information relating to payments under the Working for Families scheme, and bank account details pre-dating the plaintiffs' births, are relevant. There are additional difficulties in relation to the category three interrogatories – they are directed at the financial position of the third defendant companies, and it remains unclear why the second defendants would be able to provide the answers sought.

[19] I accept that there are aspects of categories two and three that may be relevant to the matters at issue, particularly in terms of providing insight into the business and financial structures within which work was undertaken by the plaintiffs. Having said that, the majority of questions in these categories are said to be directed at demonstrating the extensive level of "power and control" allegedly held by the second defendants over the Gloriavale community, its rules, operations and entities (including a number of non-party entities). Control is a relevant factor in the s 6 exercise, but it is directed at understanding the level of control exercised by a putative employer over a putative employee. It is necessary to focus on what will be relevant in these proceedings, and in determining the real nature of the parties' relationship, when considering relevance for the purposes of interrogatories.

[20] Even if it is accepted that the relevance threshold is overcome, at least in relation to some of the interrogatories, the interrogatories are oppressive. There are

less than two weeks to the hearing. Requiring the second defendants to refocus their attention on responding to the interrogatories would be burdensome, time-consuming and divert resources away from trial preparation.¹³ I do not accept the plaintiffs' submission that it would be a straightforward exercise, having regard to the nature and scope of the interrogatories. Nor do I accept the submission that the second defendants would not be prejudiced by the making of the orders sought. The timeframe is too short, and the interrogatories of such a nature and extent, that it is unrealistic to expect that the second defendants would be able to provide (if required) adequate answers to them.

[21] Consideration of the underlying objectives of interrogatories also supports the second defendants' opposition. In particular, requiring answers to be given to the interrogatories formulated by the plaintiffs would not ascertain details of aspects of the defendants' case so as to reduce surprise when statements of evidence are served (the point is that they have already been served) and nor would it serve to narrow the issues between the parties and thus reduce the expense and length of the hearing.

[22] As the High Court made clear in *RHH Ltd v Anderson*, the close of pleadings date has a clear purpose:¹⁴

It is to ensure that the pleadings have been completed and all interlocutory matters have been completed, so that the parties can concentrate on preparing for the hearing ... that is demanding work which requires clear time and attention. It should not be subject to disruption from interlocutory matters.

[23] Ultimately a balancing exercise is required. The balance falls squarely in favour of the second defendants. I am not satisfied that the orders are necessary at this time (as required by r 8.38(4)). I do not consider it appropriate to grant leave to the plaintiffs to administer interrogatories; and if I had I would have declined to require the second defendants to respond to them in all of the circumstances.

[24] The application is accordingly dismissed.

13. See for example the concerns expressed in *Todd Pohokura Ltd v Shell Exploration NZ Ltd* [\[2009\] NZCA 561](#).

14 *RHH Ltd v Anderson* [\[2018\] NZHC 2045](#) at [\[9\]](#).

[25] Costs are reserved.

Christina Inglis Chief Judge

Judgment signed at 11.15 am on 11 February 2022

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