



# Employment Court of New Zealand

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## Courage v Attorney-General [2024] NZEmpC 222 (21 November 2024)

Last Updated: 22 November 2024

IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA  
ŌTAUTAHI

[\[2024\] NZEmpC 222](#)  
EMPC 363/2021

IN THE MATTER OF a declaration under [s 6\(5\)](#) of the  
[Employment Relations Act 2000](#)  
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: 25 July 2024  
(Heard at Christchurch and by submissions filed on 1 and  
15 October 2024)

Appearances: B P Henry and S Patterson, counsel and A Kilic, advocate  
for plaintiffs  
A Boadita-Cormican and G La Hood, counsel for first  
defendant P Skelton KC and C Pearce, counsel for second,  
third and fourth defendants  
R Kirkness, counsel to assist the Court

Judgment: 21 November 2024

HOSEA COURAGE, DANIEL PILGRIM AND LEVI COURAGE v THE ATTORNEY-GENERAL SUED ON BEHALF OF THE MINISTRY OF  
BUSINESS, INNOVATION AND EMPLOYMENT, LABOUR INSPECTORATE [\[2024\] NZEmpC 222](#) [21 November 2024]

JUDGMENT (NO 2) OF CHIEF JUDGE CHRISTINA INGLIS

(Employer Identity)

Introduction

[1] This judgment deals with an outstanding issue as to the identity of the employer in these proceedings. The issue was reserved in my substantive judgment.<sup>1</sup> In the intervening period a judgment has been delivered in the associated proceedings, namely *Pilgrim v Attorney-General (No 2)*,<sup>2</sup> finding that the Overseeing Shepherd (the position rather than the individual who from time to time held that position) was the employer of the plaintiffs during the periods that each of them worked on the Teams.<sup>3</sup> I found that from the inception of the Gloriavale Community until his death on 15 May 2018, the Overseeing Shepherd was Hopeful Christian and, from that date, the Overseeing Shepherd was Howard Temple. Declarations as to the employer identity were made accordingly.

[2] The factual context in this case differs from that which arose in the *Pilgrim* proceedings, including in the sense that each of the *Courage* plaintiffs worked in various workplaces within the overarching Gloriavale operational structure, including various companies and trusts.

[3] It is convenient to note a further point at the outset. Following the hearing on the employer-identity issue, it became apparent that a number of companies within the Gloriavale operational structure had been removed from the Companies Register. This had occurred after the proceedings had been filed and after the application for declaration for employment status had been heard. I issued a minute inviting submissions on the point. It is sufficient to note for present purposes that Mr Skelton KC, counsel for the second, third and fourth defendants confirmed that if a finding was made that any of the affected companies were the employer, steps would then be

1 *Courage v Attorney-General* [2022] NZEmpC 77, (2022) 18 NZELR 746 at [23] and [204].

2 *Pilgrim v Attorney-General (No 2)* [2023] NZEmpC 227, [2023] ERNZ 1020.

3 At [57].

taken to put them back on the Register. That assurance does not, however, adequately address an underlying issue, which I return to below.

[4] In summary, I have formed the view that at all material times the Overseeing Shepherd (the position) was an employer of each of the *Courage* plaintiffs and if I am wrong about that the person who, for the time being, held the position as Overseeing Shepherd was an employer, and that individual assumed the existing liability from the previous office holder by way of novation. What is less clear is whether there were additional or joint employers, including the businesses in which the plaintiffs worked from time to time. I have concluded that issue (the possibility of other employing entities) does not need to be finally decided now, and nor can it be, for the reasons outlined below.

### **Approach – identifying an employer**

[5] I approach the employer-identity issue on the same basis as *Pilgrim (No 2)*, and did not understand any counsel to suggest that a different approach was required. Indeed counsel were agreed that a consistent approach ought to be adopted; although I record for completeness that Mr Skelton advised that Mr Temple (the current Overseeing Shepherd) does not accept that he (the position or the individual) was the employer, nor do the other second or fourth defendants.

[6] I summarise the approach adopted in *Pilgrim (No 2)* here for ease of reference.

[7] There is no onus on the plaintiffs to prove who their employer was.<sup>4</sup> Rather the issue is to be approached on an objective basis, weighing the evidence to reach an informed assessment as to who, on the balance of probabilities, the employer was. Such an approach has the benefit of acknowledging the realities of working relationships and what are not infrequently very complex corporate structures. It also aligns with the objectives of the [Employment Relations Act 2000](#) (the Act) – including

4. *Pilgrim (No 2)*, above n 2, at [18]-[19]. See also *Pilgrim v Attorney-General* [2023] NZEmpC 105, [2023] ERNZ 454.

to address the inherent inequality of power and having regard to the Court's broad equity and good conscience jurisdiction.<sup>5</sup>

[8] Identifying the true employer is an intensely factual exercise. While it may be helpful to have regard to the way in which documentation purporting to record a working relationship is crafted, including the identified parties to the relationship and the way in which their capacity is described, it is well established that form and reality may diverge, particularly in employment relationships. It is reality which must be discerned. The unique features of this case reflect the need for realism when assessing the identity of the employer, if the statutory purpose is to be met rather than undermined.

[9] It is possible for an employee to have joint, or multiple, employers; the phenomenon is likely to become more common with the move to more flexible ways of working.<sup>6</sup> It is also more likely to arise in the context of complex, interrelated,

business structures.

[10] In *Pilgrim (No 2)* it was held that it was the Overseeing Shepherd, regardless of the identity of the individual who held that role at any particular point of time, who was the employer.<sup>7</sup> Alternatively, if that conclusion was wrong, it was held that the employer was the individual holding the title of Overseeing Shepherd at the relevant times and there had been a transfer by novation from the first Overseeing Shepherd (Hopeful Christian) to the second Overseeing Shepherd (Howard Temple).<sup>8</sup>

[11] Identifying the employer in these proceedings raises a number of issues, complicated by the business structure and work arrangements the Gloriavale leadership put in place. That leads to difficulties, which I have already alluded to.

5 [Employment Relations Act 2000, ss 3\(1\)\(ii\)](#) and [189](#).

6. See *E Tū Inc v Rasier Operations BV* [[2022\] NZEmpC 192](#), [[2022\] ERNZ 966](#) at [[83](#)]- [[90](#)]. Upheld by the Court of Appeal: *Rasier Operations BV v E Tū Inc* [[2024\] NZCA 403](#).

7 *Pilgrim (No 2)*, above n 2, at [41].

8 At [53].

### **Where did the plaintiffs undertake their work?**

[12] The plaintiffs undertook work within the Gloriavale Community's structure from a young age and moved through three distinct time periods. The overarching finding made in the employment status judgment was that it was the leaders (ultimately the Overseeing Shepherd) who decided who would go where, do what work, for whom and when.

[13] As to the first age bracket (ages six to 12 years), I found that Peter Righteous (a Servant) was responsible for placement in work within the Gloriavale structure "at the behest of the Overseeing Shepherd."<sup>9</sup> Daniel Pilgrim began working from six years of age in the Gloriavale Community gardens; from seven years of age he was directed to work in a moss factory (since disestablished), and (an unspecified) dairy farm.<sup>10</sup> Hosea Courage harvested moss and worked in the moss factory (now disestablished); worked in the Gloriavale Community gardens and at the Glen Hopeful dairy farm and an unspecified piggery.<sup>11</sup> Levi Courage worked in an unspecified farm from the age of around six or seven.<sup>12</sup>

[14] As to the age bracket 12 to 14, it was found that Mark Christian (a Servant) made decisions in relation to work placement; rostering the plaintiffs having regard to business need and that their work placement in particular businesses was prioritised according to where labour was required.<sup>13</sup>

[15] More generally it was found that:

[164] It was the leadership, operating through Peter Righteous and Mark Christian, which decided what labour resources were required, where each boy's labour would be applied, the quantities of child labour that would be utilised, and when. There were occasions when a parent may have requested that consideration be given to an alternative placement, or when a boy's preference for work placement was identified and taken into account, but ultimately it was the leadership which decided what was required in order to effectively and efficiently run its business enterprises and allocated resources accordingly.

9 *Courage v Attorney-General*, above n 1, at [45].

10 At [47].

11 At [48].

12 At [49].

13 At [58].

[165] The evidence reflected a classic employment situation in the six to 14 age group – workers selected for particular jobs by management; attending specified workplaces at times determined by management; working under the direction and control of management; for the hours required by management; for the benefit of the business endeavour; often in environments of an industrial and/or hazardous nature; at the strict direction and control of those in charge of the business operations; permitted to take a holiday per year (at a time convenient to the leadership) and limited time off if they were sick (although this was actively discouraged).

[16] It was found that boys who reached the age of 15 years were required to participate in what was called a "transitional education/work experience programme"; and that the programme's official purpose differed from its actual purpose, namely that in reality it was "simply the transition into full time work within the Gloriavale businesses."<sup>14</sup>

[17] Mark Christian also oversaw work allocations during the transitional work period. The evidence was that Hosea

Courage worked at a pet food factory and the Glen Hopeful dairy farm.<sup>15</sup> Daniel Pilgrim worked in an unspecified honey business.<sup>16</sup> Levi Courage worked at a honey business that may have been Forest Gold and, during the seasonal slow-down, he was directed to undertake building work.<sup>17</sup>

[18] It was found that, during the so-called “transitional” period, the plaintiffs were working fulltime and that “the label assigned to their work did not reflect the reality of what they were doing or why they were doing it.”<sup>18</sup> Mark Christian identified what the particular need was and then decided which boys would work to meet that need. Once placed, they were subject to the control and discipline of whoever ran that particular worksite.<sup>19</sup>

[19] When each of the plaintiffs reached 16 years of age they became what was called Associate Partners. The Associate Partner process involved them being approached by a Shepherd (Fervent Stedfast) in groupings of other boys and asked to

14 At [68].

15 At [69].

16 At [70].

17 At [71].

18 At [174].

19 At [179].

sign a document called a “Deed of Adherence”.<sup>20</sup> The Deed of Adherence set out (for Hosea Courage and Daniel Pilgrim) that they would be bound by a Partnership Agreement; the version signed by Levi Courage stated that “as a minor” he agreed to be bound by the terms of the Partnership Agreement “in as much as they apply”. The Partnership Agreement established a Management Committee, defined as the governing management board of the Partnership, consisting of “all the Shepherds and Servants”.<sup>21</sup> None of the plaintiffs signed the Partnership Agreement, although the Deed of Adherence stated that they would comply with it.

[20] A key aspect of the Partnership was the provision of “labour hire” services to various Gloriavale businesses under an “Agreement to Provide Services”, a detailed contract for services document. The Associate Partners recorded hours of work on timesheets, and their labour was then invoiced by the partnership to the relevant business.<sup>22</sup> In respect of payment for work, the substantive judgment noted that:

[81] Hosea Courage understood, from what Fervent Stedfast told him, that if he signed the Associate Partnership documentation he would get money but the money would go into a bank account from which it would immediately be taken out and put into the Gloriavale sharing account. Hosea Courage was not given an opportunity to take legal advice on the Associate Partnership agreement. One of the documents he signed was a tax form, confirming that Gloriavale would be his tax agent.

[21] Mark Christian decided where each of the plaintiffs worked as Associate Partners:<sup>23</sup>

[a]gain, placement was determined having regard to business need and where labour resources ought to be applied.

[22] Daniel Pilgrim was directed to work at a joinery shop making hives for an unspecified honey business when he was 15 years old; from 2016 to 2019 Mark Christian directed him to work full time in a Gloriavale company called Wilderness Quest New Zealand, a hunting business; he also worked in an unspecified dairy farm and undertook maintenance work.<sup>24</sup>

20 At [76].

21 At [78].

22 At [79]. And see [81].

23 At [85].

24 At [86].

[23] Levi Courage worked in an unspecified honey business, and Hosea Courage continued to work at the pet food factory.<sup>25</sup>

[24] I made the following findings in respect of the Associate Partnership documentation that the plaintiffs carried out work under:

[90] ... While it is clear that the Gloriavale defendants obtained a significant amount of legal advice and support, including in respect of the drafting of various documents relating to work, the evidence strongly suggested that form and reality diverged. The evidence that directors served no real function in that role (including in terms of decision-making or the chain of governance), and were irrelevant, is but one example.

## Who was the employer/s?

[25] Against this backdrop, I turn to consider who employed the plaintiffs as employees.

[26] As I have said, all counsel were agreed that, if the *Courage* plaintiffs were in an employment relationship (as I found them to be), their employer was the person holding the position of Overseeing Shepherd.<sup>26</sup> I agree, and accept the submission advanced by counsel to assist, Mr Kirkness, that to reach the correct answer in this case, the control test is particularly helpful.

[27] The evidence disclosed that the person who, for the time being, held the role of Overseeing Shepherd within the Gloriavale Community, exercised ultimate controlling force in respect of work (who did what, when, how and why).

[28] This was made clear in the evidence of Zion Pilgrim, which I accepted in the substantive judgment:<sup>27</sup>

[44] Zion Pilgrim gave direct evidence about his experiences of the company and leadership structure. At the time he left Gloriavale in September 2020, he was a director of eight listed companies. His evidence was that throughout the entire time he was recorded as a director with the Companies Office, no director meetings were held. When it was put to him that meetings of the leadership group (Shepherds and Servants) were in substance director

25 At [87].

26 Subject to the reservation noted at [5] above.

27 *Courage*, above n 1. See also at [33]

and/or shareholder meetings, he described the proposition as a “pretty big stretch”. Rather, he said that the company directors within Gloriavale had no power, and the companies were “shells” with no corporate management system or structure. Zion Pilgrim reinforced evidence given by others, and which I accept, that the Overseeing Shepherd exercised ultimate control, and had the final say, on all decisions relating to business life within Gloriavale.

[29] It was also found that:<sup>28</sup>

[94] It is apparent that the identified business needs of the Gloriavale commercial operations dictated what the labour requirements were, and where various children were to be placed, and for how long, in order to meet those requirements. It was also established that these decisions were made by the leadership group, under the oversight, direction and control of the Overseeing Shepherd.

[30] And that:

[33] All Shepherds and Servants are personally appointed by the Overseeing Shepherd. In practice, the Overseeing Shepherd and his leadership group make all decisions on how the Community operates ...

[31] The Gloriavale Community’s foundational documents were also held to be relevant to assessing whether an employment relationship existed. For present purposes that finding as to the “roadmap” for life within the Community (“What We Believe”) is of particular note in respect of the employer issue. As referred to in the substantive judgment:

[6] The roadmap for life within Gloriavale is a document called “What We Believe”. It comprehensively summarises the values and beliefs which members are expected to abide. “What We Believe” sets out the leaders’ interpretation of the teachings of the King James Version of the Bible and requires strict obedience to the leaders at all times and in all things – including work. In this regard, all members of Gloriavale are to:

“... obey the leaders of the Church in all matters including his faith and his involvement in the practical life and work of this Community.”

[32] The evidence pointed squarely to the Overseeing Shepherd (the position) having ultimate control of work undertaken within the Gloriavale Community. The same end point was reached in *Pilgrim (No 2)*:<sup>29</sup>

28 See too, for example, at [58]: “Like Peter Righteous, Mark Christian undertook the work assignment role at the behest of the Overseeing Shepherd”; at [62]: “... it was the leaders (ultimately the Overseeing Shepherd) who decided who would go where, do what work and when.”

29 *Pilgrim (No 2)*, above n 2.

[15] ...While it is true that the Shepherds play an important role, including in relation to work undertaken within the Community, by whom and when, they are not the ones who ultimately pull the strings. The ultimate string-pulling function, and entitlement to do so by virtue of the Community's foundational documents, sits firmly with the Overseeing Shepherd. From the inception of the Gloriavale Community until his death on 15 May 2018, the individual holding that role was Hopeful Christian and, from that date, Howard Temple.

[33] In *Pilgrim (No 2)*, I concluded that it was wholly consistent with equity and good conscience that the Overseeing Shepherd be accountable for actions/inactions as an employer and that the rights and obligations of the employment relationship roll over to the new Overseeing Shepherd on death. I remain of that view. I also noted that such a result would be fully consistent with the Gloriavale Community's foundational documents. The same point applies in this case.

[34] In this regard it is notable that *What We Believe* states that:[30](#)

Where anybody is required to fill any position of responsibility in the Church, whether it be school teachers in the school, sisters in the kindergarten, men to manage finances or areas of work amongst the men, or any other position whatsoever, then *it is the principal leader who has the authority and the responsibility to make all such appointments.*

And that:

Having expressed his faith in Christ and submission to His will, every person joining this Community must declare ... that *he will submit to, be guided by, and obey the leaders of the Church in all matters concerning his ... involvement in the practical life and work of this Community.*

And that:

He should be assured and convinced also, that Christ holds the leader of this Church directly in His hand, and that he can therefore entrust his whole life and faith to the decisions and leadership of this leader.

And that:

... there will always be one principal leader *who must accept full responsibility for all that happens in the Church*, and to whom all the other leaders and brethren must give account.

[35] I record for completeness that, while counsel for the Gloriavale defendants made it clear that the current Overseeing Shepherd did not accept that he (the position

30. The Church at Gloriavale *What We Believe* (3rd ed, The Church at Gloriavale, Moana, 2018) at [F.V] (emphasis added).

or the individual) was an employer, no submissions were advanced as to why (if the plaintiffs were employees) that was said to be so.

[36] I have no difficulty concluding, based on the evidence that was before the Court, that the Overseeing Shepherd was an employer of each of the plaintiffs during the time they were employees while living within the Gloriavale Community.

### **Joint or multiple employers?**

[37] That is not, however, an end to the matter. It is possible, as all counsel agreed, that an employee can have joint or multiple employers. Were any of the Gloriavale entities an employer of any or all of the plaintiffs?

[38] In the employment status claim the plaintiffs sought, and were granted, declarations that they each worked in different parts of the Gloriavale structure within different periods of time: six to 14 years of age; the transitional year (15 years of age) and 16 plus years of age.

[39] The legal identity of each business they worked within, and when they worked where, was unclear (as the summary set out at [12] to [24] above reflects) and seriously hindered by the complexity of the Gloriavale business structure and the paucity of written records before the Court. The structure is very difficult to navigate and very difficult to untangle, and the same point can equally be made in respect of the financial arrangements. What is, however, clear is that any money generated by the businesses was, in practice, ultimately returned to the Community. I say "in practice" because each limited liability company, and the trusts, remained legally required to deal with their profits, assets and liabilities (including in respect of those who undertook work for their enterprises), in accordance with the legal obligations and requirements imposed under such legislation as the [Companies Act 1993](#), the [Partnership Law Act 2019](#) (formerly the [Partnership Act 1908](#)) and the [Charitable Trusts Act 1957](#).

[40] So, for example, Worker A was assigned to work at the Apetiza Ltd factory; Apetiza Ltd was a limited liability company

(it has since been removed from the Companies Register) sitting within, but legally separate from, the Gloriavale

Community and the Overseeing Shepherd. Worker A's work produced Apetiza Ltd's products; those products were sold in the marketplace by Apetiza Ltd; consumers purchased the products, and payment for those products was made to and held by Apetiza Ltd. While arrangements may have been in place as to how any profits made by Apetiza Ltd (as a result of Worker A's labour) were to be dealt with, it is, in law, for the company, via its directors and ultimately shareholders, to decide how its profits are to be distributed to its shareholders, or reapplied within the business, within the permitted legal framework.

[41] It is, as I have said, clear that the Overseeing Shepherd exercised ultimate control over the Gloriavale Community, including its business, partnership and trust activities. But what also emerged from the evidence is that the plaintiffs were fully integrated into the workplaces they were directed to work in and that, while working there, they worked under the day-to-day direction and control of those who managed those workplaces. As they progressed to Associate Partnership age and stage, they were paid by the particular businesses, and then on paid (the Gloriavale defendants said voluntarily) those amounts in accordance with expected practice.

[42] In other words, when looking at the real nature of the relationship, particularly elements of integration, whose business the plaintiffs were working for, and under whose day-to-day direction and control they undertook their work,<sup>31</sup> there appears to me to be a firm basis for suggesting that the plaintiffs had more than one employer at any one time.

[43] If that is so, the next question is who? It is notable that the plaintiffs themselves were not certain about the names of the various entities they worked in during their time within the Gloriavale Community, and when they worked there.

[44] The complex operational structure, and the evidence before the Court, makes it difficult to reach any definitive rulings on the point. But there are additional difficulties, which are relevant to the Gloriavale defendants' suggestion that the removal of various companies from the Companies Register can be addressed by simply reinstating them if one or more of those companies is held to be an employer.

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

As I pointed out in the earlier judgment (in accepting a submission on behalf of the Gloriavale defendants themselves), any putative employer needs to be given an opportunity to be heard *prior* to making a declaration against them.<sup>32</sup> That is what s 6(6)(b) of the Act expressly requires and that has not occurred, nor could it occur if the plaintiffs' proposal was accepted.<sup>33</sup>

[45] Two points accordingly arise.

[46] First, a number of potential employing entities are not before the Court. Given the Court's broad powers, including of equity and good conscience, and the early stage that these proceedings are at, I do not regard it as fatal that all employers may not have been identified at this stage. If that was to be the answer it would be perverse, cutting off a potential line of liability simply because of the complex web of business and other operations adopted by the Gloriavale leadership.

[47] It is sufficient to record at this point that there may well be joint or multiple employers in addition to the Overseeing Shepherd but that it is not possible, appropriate or necessary to make declarations of such status at this stage. The issue will need to be addressed and resolved on the personal grievance claim, which has now been removed to the Court for hearing.

[48] The Court has the power to join a party under s 6 at any stage of the proceeding, where it considers it appropriate to do so.<sup>34</sup> This segues into the second point.

[49] Contrary to Mr Skelton's submission, issues relating to his clients' decision to remove various companies from the Companies Register are not addressed by re-registration only if they are found to be joint or additional employers. Such an approach would put the cart before the horse and circumvent the important protections in s 6(6)(b) of the Act. The issue will need to be addressed in the next stage of the proceedings.

32 *Pilgrim (No 2)*, above n 2, at [16].

33 [Employment Relations Act 2000, s 6\(6\)\(b\)](#).

34 *Pilgrim (No 2)*, above n 2, at [58]-[65].

### **Controlling third parties?**

[50] The possibility of controlling third party relationships was raised by Ms Boadita-Cormican, counsel for the Attorney-General, during the course of submissions.<sup>35</sup> Counsel suggested that the third and fourth defendants may be controlling third parties but made no submissions as to whether the evidence reflects that. I consider that this possibility can be put to one side for the purposes of this judgment, as I did not understand counsel to argue that a controlling third party is also an

employer.

[51] As [s 103B](#) of the Act makes clear, an employee may apply to have a third party joined to a personal grievance claim where they have raised a personal grievance; they have applied to the Employment Relations Authority to resolve the personal grievance with the employer; and the personal grievance relates to an action that is alleged to have occurred while the employee was working under the control or direction of a controlling third party.<sup>36</sup> The third party must be joined to the proceedings if there is an arguable case that they are a controlling third party and their actions caused or contributed to the personal grievance. It is noted that the Authority/Court may, at any stage of the proceedings, of its own motion join a controlling third party to the proceedings.<sup>37</sup>

[52] Where the Authority/Court determines that the actions of the controlling third party caused or contributed to the situation that gave rise to the personal grievance, it may, if it is considered just to do so, order the controlling third party to provide remedies to the employee under [s 123\(1\)\(b\)](#) (reimbursement of lost wages) and [s 123\(1\)\(c\)](#) (compensation for humiliation, loss of dignity and injury to feelings; loss of any benefit, which the employee might reasonably have been expected to obtain if the personal grievance had not arisen).<sup>38</sup>

[53] Determining whether a third party/ies might appropriately be joined is not an issue that arises at this stage. That is because, while such a finding gives rise to

35 See [Employment Relations Act 2000, s 103B](#).

36 See generally *Riddler v Meridian Energy Ltd* [2023] NZEmpC 87, [2023] ERNZ 339 at [27]- [46].

37 [Employment Relations Act 2000, s 103B](#).

38 [Section 123A](#).

potential liability, a controlling third party is not deemed to be an employer and an application must be advanced on a personal grievance claim. In other words, the issue may become live in the context of the personal grievance proceedings now before the Court (having been removed from the Authority),<sup>39</sup> noting that issues may arise in respect of the date on which [s 103B](#) was enacted (namely on 27 June 2020 by [s 6](#) of the [Employment Relations \(Triangular Employment\) Amendment Act 2019](#)).

## Summary of conclusions

[54] I am satisfied, based on the evidence before the Court, that the Overseeing Shepherd (regardless of the identity of the individual holding the role at any particular point in time) was the employer during the periods that each of the plaintiffs worked in the Gloriavale Community. If I am wrong about that, the individual occupying the role of Overseeing Shepherd was employer of each of the plaintiffs, and there was a transfer by novation from one to the other. From the inception of the Gloriavale Community until his death on 15 May 2018, the Overseeing Shepherd was Hopeful Christian and, from that date, Howard Temple.

[55] The plaintiffs may well have been simultaneously employed by other entities within the Gloriavale structure (jointly or otherwise), but that issue cannot be resolved at this stage and does not (in my view) need to be. Issues arise in respect of the de- registration of various companies, which will need to be addressed in the next phase of the proceedings.

[56] There may be issues of controlling third party liability, but these issues do not arise for determination at this stage.

## Declarations

[57] The following declarations are accordingly made:

- Hosea Courage was employed by the Overseeing Shepherd from when he was six years old in approximately 2008 to the time he left the

39 *Pilgrim v The Overseeing Shepherd* [2024] NZEmpC 146.

Gloriavale Community on 18 October 2019. The Overseeing Shepherd was the first named second defendant, Howard Temple, from 15 May 2018 to the time of Hosea Courage's departure and Hopeful Christian until 15 May 2018.

- Daniel Pilgrim was employed by the Overseeing Shepherd from when he was six years old in approximately 2006 to the time he left the Gloriavale Community on 20 September 2020.
- Levi Courage was employed by the Overseeing Shepherd from when he was six years old in approximately 2009 to the time he left the Gloriavale Community in June 2021.

There may have been other employers of the plaintiffs during the times they undertook work in the Gloriavale Community. That issue cannot be determined at this stage for the reasons outlined above, but that is not fatal to any claim of liability against any such other possible employers.

## Costs

[58] Costs are reserved.

Christina Inglis Chief Judge

Judgment signed at 9.15 am on 21 November 2024

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