Employment Court of New Zealand

Haig v Edgewater Developers Limited no.2 [2012] NZEmpC 87 (6 June 2012)

Last Updated: 19 June 2012

IN THE EMPLOYMENT COURT AUCKLAND

[2012] NZEmpC 87

ARC 30/10

IN THE MATTER OF proceedings removed from the

Employment Relations Authority

AND IN THE MATTER OF interlocutory applications

BETWEEN ROBERT HAIG Plaintiff

AND EDGEWATER DEVELOPERS LIMITED

First Defendant

AND CARRINGTON FARMS LIMITED Second Defendant

AND PH II INCORPORATED Third Defendant

Hearing: 6 June 2012 by telephone conference

(Heard at Auckland)

Counsel: Wayne Peters, counsel for plaintiff

Josh McBride, counsel for defendants

Judgment: 6 June 2012

INTERLOCUTORY JUDGMENT NO 2 OF CHIEF JUDGE GL COLGAN

[1] I decline the defendant's application to rescind the Court's order made on

20 January 2012[1] that letters of request are to issue to a relevant court in the United

States of America requesting that evidence in these proceedings be given by two citizens of that nation.

ROBERT HAIG V EDGEWATER DEVELOPERS LIMITED NZEmpC AK [2012] NZEmpC 87 [6 June 2012]

[2] I do, however, amend the order so made by adding to it that the Court will not issue letters of request unless and until a Judge can be persuaded that such is necessary to obtain the particular evidence of a witness or witnesses for a trial issue that has been set down for hearing.

[3] These changes have been made, taking into account the other orders and directions to be made and, in particular, the prospects of a judicial settlement conference. The orders just made also take into account Mr Peters's advice that one of the two US potential witnesses, Mr Gaynor, cannot now contribute useful recollections of relevant events and so is very unlikely to give evidence, and that the other potential witness, Mr Rosetti, may now be agreeable to giving evidence by video conference call.

[4] The plaintiff wishes to explore settlement of these proceedings at a judicial settlement conference. Whilst not being opposed to that course, Mr McBride needs seven days to take instructions but is hopeful that his clients will agree to do so, more especially if, as can be arranged, there will be the ability to participate in a judicial settlement conference by video link.

[5] Assuming the defendants' agreement to participate in a judicial settlement conference, Tuesday 18 September 2012 has been tentatively set aside for that event. Upon Mr McBride's confirmation of his clients' participation, the Registrar will issue the usual directions for a judicial settlement conference. A template of these can be found on the Court's website and may be useful for counsel to have in their discussions with their clients about the potential benefits of a judicial settlement conference.

[6] The third matter dealt with at today's conference with counsel is the nature of the next hearing. Although Mr McBride has submitted that this should deal, as a preliminary question, with the identity and provenance of the shares which Mr Haig may have agreed to receive, and that such a preliminary hearing will necessarily encompass arguments on limitations that the defendants raise, Mr Peters for the plaintiff opposes this course. He says that the next step in the proceeding ought to be

a preliminary hearing of all limitations questions so that the parties know precisely the issues on which they will go to trial on matters of liability.

[7] Mr McBride says, in reply, that the Court should not determine the limitations question raised by the defendants' counterclaim against Mr Haig because this will turn on the knowledge of the relevant defendant of the extent of Mr Haig's alleged wrongdoing which is said to have amounted to a breach by him of his contract of employment. Mr McBride submits that this will require the Court to hear evidence on that issue which will not be able to be determined on the pleadings alone. In these circumstances Mr McBride says that the preferable course is to determine, as a preliminary question, whether the shares claimed by Mr Haig are, as the defendants say, shares in US companies which are not parties to the proceedings and which are, in any event, known to be insolvent.

[8] There is always a trade-off in such situations between saving or even eliminating trial time by pre-determining limitations issues and, potentially, exacerbating that trial time in effect. Such decisions inevitably require a degree of speculation and uncertainty.

[9] On balance, I consider that the most just and expeditious course will be to set down as preliminary issues, but only after a judicial settlement conference (if there is to be one), all limitations issues, even if these may require a degree of tightly contained relevant evidence. This will not contradict the directions I gave in the judgment of 20 January 2012 at [31] and [32] for a separate trial on questions of liability (assuming that these exist after limitations questions are determined) and which will no doubt focus on the share identity question highlighted by the defendants.

[10] The Court is able to deal with those limitations arguments at a preliminary hearing on 15 October 2012 which should allow for a judicial settlement conference about a month before that date. Directions to this hearing will be given once the suitability of the date is confirmed with counsel.

[11] The only other question is to confirm that the defendants' statement of defence to the plaintiff's amended statement of claim will be filed within seven days of the date of this interlocutory judgment.

[12] I reserve costs and leave for any party to apply for any further interlocutory orders or directions on reasonable notice.

GL Colgan

Chief Judge

Judgment signed at 3 pm on Wednesday 6 June 2012

---

[1] [2012] NZEmpC 4.
