



Employment Court of New Zealand

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Martin v Solar Bright Limited (in liquidation) [2021] NZEmpC 36 (25 March 2021)

Last Updated: 30 March 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA ŌTAUTAHI

[\[2021\] NZEmpC 36](#)

EMPC 312/2020

IN THE MATTER OF an application for rehearing
AND IN THE MATTER of an application for access to
 court documents by Murray
 Spackman
BETWEEN PATRICK MARTIN
 Applicant
AND SOLAR BRIGHT LIMITED (IN
 LIQUIDATION)
 Respondent

Hearing: On the papers
Appearances: G Slevin, counsel for Mr Spackman
 Mr Martin in person
 M Taefi, counsel assisting the
 Court
Judgment: 25 March 2021

INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH

(Application for access to court documents)

[1] Murray Spackman has applied for access to court documents in this proceeding in which Mr Martin has applied for a rehearing. The application is very broad because he asked for access to:

Such documents on [the] court file as the Court deems appropriate to allow me access to on a confidential basis.

[2] Two grounds were put forward by Mr Spackman to justify access being granted. First, he is involved in a High Court proceeding that may be affected by

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findings of this Court. The second ground was related to the first one, because access may enable him to determine whether it is necessary to continue with and/or clarify the nature of a separate application he made for leave to be represented in this proceeding. This ground is no longer relevant because Mr Spackman has withdrawn that application.

[3] In the High Court proceeding Mr Spackman is pursuing a claim against Mr Martin for alleged breaches of the [Fair Trading Act 1986](#) and the tort of deceit related to an invention called DATAeye. Mr Spackman was an investor in Solar Bright Ltd as was Mr Martin. The Employment Relations Authority determined that DATAeye was owned by Solar Bright Ltd.1

[4] Mr Martin opposed the application.

[5] Despite being given an opportunity to make submissions Mr Spackman declined to do so. Mr Martin made submissions as did Ms Taefi, counsel assisting, who identified the principles to apply.

Analysis

[6] The [Employment Relations Act 2000](#) (the Act) and the [Employment Court Regulations 2000](#) do not deal with access to documents held on a court file.

[7] The absence of a provision in either the Act, or regulations, is addressed by applying reg 6; that is, where there is a gap, the Court is required to dispose of the case as nearly as may be practicable in accordance with the [High Court Rules 2016](#) affecting a similar case.² If the [High Court Rules](#) do not deal with the situation, the case is to be decided in such a manner as the Court considers best promotes the object of the Act and “the ends of justice”.³

[8] The [High Court Rules](#) no longer deal with access to court files. Previously sub-pt 2 of [pt 3](#) of the [High Court Rules](#) provided for access to documents on a court

1 *Martin v Solar Bright Ltd (in liquidation)* [2019] NZERA 463 (Member Hickey).

2 [Employment Court Regulations 2000](#), reg 6(2)(a)(ii).

3 Regulation 6(2)(b).

file but that part was revoked and replaced by the [Senior Courts \(Access to Court Documents\) Rules 2017](#).⁴ The Employment Court is not a senior court listed in those rules and there was no corresponding amendment to the Act or regulations to address the situation created by repealing sub-pt 2.

[9] To deal with the resulting gap reg 6 has been used to apply the [Senior Courts \(Access to Court Documents\) Rules](#) as a useful analogy, to assist the Court in dealing with an application in a just way.⁵

[10] The [Senior Courts \(Access to Court Documents\) Rules](#) distinguish between granting access to a party to the litigation and to a non-party on request. Under those rules every person has the right to access the formal court record of a civil proceeding.⁶ That record is defined and means:⁷

- (a) a register or an index;
- (b) a published list that gives notice of a hearing;
- (c) a document that–
 - (i) may be accessed under an enactment other than these rules; or
 - (ii) constitutes notice of its contents to the public;
- (d) a judgment, an order, or a minute of the court, including any record of the reasons given by a Judge;
- (e) the permanent court record under [Part 7](#) of the [Criminal Procedure Rules 2012](#);
- (f) the rolls of barristers and solicitors kept under [section 56](#) of the [Lawyers and Conveyancers Act 2006](#) or any former corresponding enactment.

[11] The breadth of Mr Spackman’s application goes further than seeking access to the formal court record. To consider the balance of the application rr 11, 12 and 13 are helpful. [Rule 11](#) is administrative; the request has to identify the person who has made it and give his or her address, and provide particulars to enable the Registrar to

4 [Senior Courts \(Access to Court Documents\) Rules 2017](#), r 19(2).

5. *Prasad v LSG Sky Chefs New Zealand Ltd* [2017] NZEmpC 160 at [4]; *Sawyer v The Vice-Chancellor of Victoria University of Wellington* [2019] NZEmpC 7 at [8]; and also *Johnston v Fletcher Construction Company Ltd* [2020] NZEmpC 117.

6 Rule 8(1).

7 Rule 4.

identify the document or documents requested, to give reasons for asking for access and to set out any proposed conditions.⁸ Mr Spackman’s application is very broad because it is, in reality, a request for access to the whole file. Despite its breadth I am satisfied that what has been applied for is sufficiently clear to satisfy r 11.

[12] Rule 12 provides for what needs to be considered:

In determining a request for access under rule 11, the Judge must consider the nature of, and the reasons given for, the request and take into account each of the following matters that is relevant to the request or any objection to the request:

- (a) the orderly and fair administration of justice:
- (b) the right of a defendant in a criminal proceeding to a fair trial:
- (c) the right to bring and defend civil proceedings without the disclosure of any more information about the private lives of individuals, or matters that are commercially sensitive, than is necessary to satisfy the principle of open justice:
- (d) the protection of other confidentiality and privacy interests (including those of children and other vulnerable members of the community) and any privilege held by, or available to, any person:
- (e) the principle of open justice (including the encouragement of fair and accurate reporting of, and comment on, court hearings and decisions):
- (f) the freedom to seek, receive, and impart information:
- (g) whether a document to which the request relates is subject to any restriction under [rule 7](#):
- (h) any other matter that the Judge thinks appropriate.

[13] A balancing exercise is required when assessing the considerations in r 12. Under r 13 that balancing exercise requires regard to be had to the stage of the proceeding when the request is made and matters such as the protection of the confidentiality and privacy interests of the parties. The rule reads:

13. **Approach to balancing matters considered**

In applying rule 12, the Judge must have regard to the following:

8 Rule 11(2).

(a) before the substantive hearing, the protection of confidentiality and privacy interests and the orderly and fair administration of justice may require that access to documents be limited:

(b) during the substantive hearing, open justice has—

- (i) greater weight than at other stages of the proceeding; and
- (ii) greater weight in relation to documents relied on in the hearing than other documents:

(c) after the substantive hearing,—

- (i) open justice has greater weight in relation to documents that have been relied on in a determination than other documents; but
- (ii) the protection of confidentiality and privacy interests has greater weight than would be the case during the substantive hearing.

[14] The rules do not create a presumption in favour of access being granted and the considerations in r 12 are not listed in a hierarchy.⁹

[15] Access to more than the formal court record by a non-party might be permitted if what is being pursued is for a recognised and legitimate purpose.¹⁰ That purpose can include obtaining documents to assist, or to potentially assist, other litigation so long as there is a point to the exercise. There has to be at least a reasonable prospect that relevant material may be found.¹¹

[16] Mr Martin objected to access being granted, pointing out that he had applied for a rehearing of his unsuccessful challenge to this Court.¹² His submissions concentrated on the reasons for applying for a rehearing.

[17] The application was made for a recognised and legitimate purpose because it may assist in the resolution of another proceeding. Although not argued, I consider relevant material may be found because both the High Court proceeding and this case

⁹ *Crimson Consulting Ltd v Berry* [\[2018\] NZCA 460](#), [\[2019\] NZAR 30](#).

¹⁰ *Greymouth Petroleum Holdings Ltd v Empresa Nacional Del Petróleo* [\[2017\] NZCA 490](#), [\[2017\] NZAR 1617](#).

¹¹ At [36].

¹² *Martin v Solar Bright Ltd (in liq)* [\[2020\] NZEmpC 144](#).

touch on the business of Solar Bright and DATAeye. Granting access is also consistent with the freedom to seek, receive and impart information as referred to in r 12(f).

[18] Nothing on the court file discloses information about Mr Martin's private life, or that is confidential, such that it should not be disclosed. Mr Martin's submissions do not persuade me that the required balancing exercise should come down in favour of declining the application. There is a sufficient association between Mr Martin and Mr Spackman, given their respective interests in Solar Bright Ltd and their ongoing litigation over the company, to justify access to the court file.

[19] The application is granted. Mr Spackman may have access to all of the documents held on the court file.

[20] Costs are reserved. The parties may file memoranda if costs are to be sought.

K G Smith Judge

Judgment signed at 4.35 pm on 25 March 2021

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