Employment Court of New Zealand

Premier Events Group Limited v Beattie no.3 [2012] NZEmpC 71 (1 May 2012)

Last Updated: 5 May 2012

IN THE EMPLOYMENT COURT AUCKLAND

[2012] NZEmpC 71

ARC 22/11

IN THE MATTER OF proceedings removed from the

Employment Relations Authority

AND IN THE MATTER OF interlocutory applications

BETWEEN PREMIER EVENTS GROUP LIMITED First Plaintiff

AND BA PARTNERS LIMITED (IN LIQUIDATION AND RECEIVERSHIP)

Second Plaintiff

AND MALCOLM JAMES BEATTIE First Defendant

AND ANTHONY JOSEPH REGAN Second Defendant

AND PATRICIA PANAPA Third Defendant

AND BETWEEN MALCOLM JAMES BEATTIE First Plaintiff

AND ANTHONY JOSEPH REGAN Second Plaintiff

AND PATRICIA PANAPA Third Plaintiff

AND PREMIER EVENTS GROUP LIMITED First Defendant

AND BA PARTNERS LIMITED (IN LIQUIDATION AND RECEIVERSHIP)

Second Defendant

PREMIER EVENTS GROUP LIMITED V MALCOLM JAMES BEATTIE NZEmpC AK [2012] NZEmpC 71 [1 May 2012]

Hearing: 30 April 2012

(Heard at Auckland)

Counsel: Aaron Lloyd and Vonda Hodgson, counsel for Premier Events Group

Limited

David Neutze and Natalie Lord, counsel for BA Partners Limited (in liquidation and receivership)

John Eichelbaum, counsel for Malcolm James Beattie, Anthony

Joseph Regan and Patricia Panapa

Judgment: 1 May 2012

ORAL INTERLOCUTORY JUDGMENT NO 3

OF CHIEF JUDGE GL COLGAN

[1] These are my decisions on a series of interlocutory pre-trial matters argued yesterday, 30 April 2012, on the first scheduled day of the hearing. Because of their number and complexity, and because of the desirability to get on with the hearing, I am only going to give the decisions. My reasons for those decisions will follow later in a separate judgment.

[2] I deal first with the application by BA Partners Limited (in liquidation and receivership) (BAPL) to strike out Anthony Regan's affirmative defence in the nature of a set-off, which is in the form of an unjustified disadvantage personal grievance. I decline that application to strike out Mr Regan's grievance. It was raised by the service on BAPL of Mr Regan's grievance proceedings which were filed in the Employment Relations Authority. The date of its raising, so far as that can be best estimated, was 25 June 2010. The 90 day period provided for in s 114 of the Employment Relations Act 2000 (the Act) is calculated by counting back from that date. That 90 day period covers some of the period of Mr Regan's employment with BAPL so that he is entitled to argue that he was unjustifiably disadvantaged in his employment pursuant to s 103(1)(b) of the Act.

[3] A rather more difficult question then arises as to what conduct by the employer may be encompassed within that unjustified disadvantage grievance. I have concluded that not only can events which occurred during the period of 90 days

before 25 June 2010 (which in reality may be a period of one or two weeks before Mr Regan's employment ended) be the subject of that grievance, but also events connected with those events in the last days of his employment may fall for consideration if these amount to a course of conduct leading and linked to the events within the 90 day period.

[4] Next, I deal with the arguments advanced by the corporate plaintiff parties of inadmissibility of intended evidence to be called by the individual defendant parties. I deal with these inadmissibility questions on a witness by witness basis, as those applications were originally framed, rather than as the arguments were presented yesterday on a ground by ground basis.

[5] I have determined that the evidence of Jonathan Ferdinand is not admissible. I have determined that the evidence of Robert Harvey is not admissible. In relation to the intended evidence of William Garlick, as I indicated yesterday, unless an amended brief of Mr Garlick's evidence is filed and served, which amended brief may itself be challenged, the evidence currently intended to be advanced by him is not admissible. Similarly, the evidence of Nicola Wagner is not admissible, nor is that of Blair Dods admissible.

[6] In relation to the intended evidence of Lisa Hill, I have determined that, although not all paragraphs of Ms Hill's evidence were challenged, those which I have found would be inadmissible, that is paras 3, 4, 7 and 8, mean that the balance of Ms Hill's evidence has no probative value and so her evidence as a whole will be inadmissible. The same applies to the intended evidence of Roxanne Salton. The particular paragraphs which I have concluded would be inadmissible in Ms Salton's brief of evidence are 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15. Absent those paragraphs, Ms Salton's intended evidence does not have probative value. Finally in this regard, I have reached the same conclusion in relation to the proposed evidence of Aroha Whippy. The paragraphs which are particularly not admissible in Ms Whippy's evidence are 3(c), (d), (e), (f) and (f)(ii). Likewise, shorn of those paragraphs, the intended evidence of Ms Whippy has no probative value.

[7] I turn now to the intended evidence of other witnesses and, in particular, of

Malcolm Beattie and Mr Regan.

[8] In relation to Mr Regan's brief dated 13 March 2012, the last 26 words of paragraph 9.12 are inadmissible. Paragraph 13 of Mr Regan's brief, so far as it refers to allegations of asset stripping which occurred solely[1] after his employment ended, are inadmissible. That is likewise with paragraph 19.4 of Mr Regan's brief of

13 March, that is references (solely) to post-employment asset stripping are inadmissible.

[9] Next, I return to Mr Regan's reply brief dated 26 April 2012. Although not inadmissible, paragraph 19.9 needs to be re-worded to make sense. Paragraph 9.30 is inadmissible and should not be read. The second sentence of paragraph 9.60 is inadmissible. Paragraph 9.62 is inadmissible and must be deleted. That is likewise with the following paragraphs: 9.64, 9.65, 9.66, 9.67, 9.68, 16 and 30.

[10] The next matter raised yesterday was an objection taken by Mr Eichelbaum (for the individual parties) to the proposed use and the presence in evidence of documents relating to Mr Beattie's tax affairs. I propose to adjourn, for later consideration if necessary, those objections to the use of Mr Beattie's tax records that counsel alleges were obtained, and are proposed to be used, unlawfully by the corporate parties.

[11] Next, I deal with the difficult question of the order for trial. The separation of the case involving Mr Regan alone into two allocated days within a longer hearing may unfortunately require witnesses to give evidence twice. Having considered this

and the general undesirability of it, I have concluded that that must happen unfortunately, unless counsel for BAPL are present and participate in the longer hearing.

[12] Next, I turn to the matters raised by counsel overnight. They are, first, a joint application to exclude the Press from the hearing although I presume that what is

really meant is that they seek an order that there be no publication beyond the courtroom of anything said or done in the hearing.

[13] The second application sought jointly by counsel is that what are referred to as 'clients' by acronym. Again I interpret this to seek an order that any report of the proceedings and/or the judgment refer to non-parties who are clients or customers of the party enterprises be referred to by acronym.

[14] I decline to make the first order sought, that is the exclusion of the Press from the hearing. There are no grounds supplied for what is a very significant variation from the usual practice of public justice. It is arguable whether indeed there is power for me to do so, that is to exclude news media as a class from the courtroom. I also add a note of concern that from the documents I have received overnight, it appears that the consent of the corporate parties may possibly have been given as a condition of obtaining a witness list and the Court would not want to be party to that sort of arrangement if indeed that occurred. If I had contemplated making such a broad order excluding the Press, I would almost certainly have wanted to hear from a representative of the news media before making such an order.

[15] The second application, that is the anonymisation of clients, is premature. Again there are no reasons given for this. There is no proposed code as to how numerous enterprises might be identified so that all concerned can know who is being referred to. I simply note, in relation to orders for non-publication under cl 12 of Schedule 3 to the Act, which is the Court's power to make such orders, that names of witnesses or particular evidence or contents of documents can be the subject of non-publication orders if, on a case by case basis, there are grounds for that and the Court considers that it is appropriate to do so.

GL Colgan
Chief Judge

Judgment delivered orally at 9.50 pm on Tuesday 1 May 2012

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[1] The word "solely" has been added after discussion with counsel to clarify what was intended by me.
